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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1925

## No. 106

W. D. SANDERS, PETITIONER,

vs.

ARMOUR FERTILIZER WORKS AND NATIONAL FIRE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

[illegible]

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1933**

# No. 106

W. D. SANDERS, PETITIONER,

*vs.*

ARMOUR FERTILIZER WORKS AND NATIONAL FIRE INSURANCE COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE

# UNITED STATES CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT.

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No. .....

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ARMOUR FERTILIZER WORKS, APPELLANT,

VS.

W. D. SANDERS, ET AL., APPELLEES.

ARMOUR FERTILIZER WORKS, APPELLANT,

VS.

W. D. SANDERS, ET AL., APPELLEES.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF TEXAS.

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**Caption.**

Be it remembered, that at a regular term of the District Court of the United States for the Eastern District of Texas, begun and holden at Texarkana, Texas, on the 16th day of May, A. D. 1932, and which term is continued in session and not to be adjourned until the

next regular term of said court to be held and begun on the 16th day of January, A. D. 1933, the Honorable Randolph Bryant, United States District Judge for the Eastern District of Texas, presiding, the following proceedings were had, and the following causes came on for trial, and were tried, to-wit:

*Consolidated.*

*No. 75 in Equity.*

*National Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

**Plaintiff's Bill in Equity.**

(In Cause No. 75.)

*In the District Court of the United States for the Eastern District of Texas, Texarkana Division.*

*No. 75 in Equity.*

*National Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

Now comes the National Fire Insurance Company, a corporation duly incorporated under the laws of the State of Connecticut, complaining of W. D. Sanders,

a resident of Bowie County, Texas, and Armour Fertilizer Works, a corporation incorporated under the laws of the State of Illinois, with its principal office in Cook County, Illinois, and with its president, vice-president, secretary, treasurer and manager located in Cook County, Illinois, and would show to the court the following:

I.

The residence and citizenship of the plaintiff is Hartford, Connecticut.

II.

The residence and citizenship of the defendant, W. D. Sanders is Bowie County, Texas, and the residence and citizenship of the defendant, Armour Fertilizer Works is Cook County, Illinois; the plaintiff being a citizen of the State of Connecticut, the defendant, Sanders, being a citizen of the State of Texas, and the defendant, Armour Fertilizer Works being a citizen of the State of Illinois.

III.

Plaintiff would show that this bill was originally filed in the Northern District of Texas, Dallas Division, pursuant to its understanding that the said W. D. Sanders was a resident of Dallas County, Texas, and that upon the hearing of such bill the said Sanders testified that he was a resident of Bowie County, Texas, and upon the motion of Armour Fertilizer Works, such bill as originally filed in the Northern District of

Texas was dismissed on account of the residence of the said W. D. Sanders, without prejudice, however, to this plaintiff's right to refile this bill in the proper jurisdiction, and the plaintiff would therefore show that the residence of the said W. D. Sanders having been fixed at Bowie County, Texas, by the adjudication of the United States District Court for the Northern District of Texas, Dallas Division, and notwithstanding such fact the said W. D. Sanders is temporarily residing in Dallas County, Texas, where service of process will have to be made upon him.

IV.

The plaintiff heretofore issued to W. D. Sanders its certain fire insurance policy No. 163867, insuring him against loss by fire on a certain dwelling house situated in DeKalb, Texas, the said W. D. Sanders being the insured and beneficiary named in said policy, which said policy in its amount exceeded the sum of $3,400.00.

V.

A fire was reported to the plaintiff as having occurred under this policy on July 3rd, 1927, the report being that such fire injured and damaged the property described in this policy, and following such fire this plaintiff has taken up with the said W. D. Sanders the question of the adjustment of the loss thus reported and has adjusted such loss with said Sanders at the sum of $3,400.00.

VI.

Plaintiff would further show that on July 18th, 1927, Armour Fertilizer Works filed a suit against W. D. Sanders in the Municipal Court of Cook County, Illinois, in which they claimed the sum of $7,589.81. The character of this action being an attachment, the number of the suit being 1413423, the ground therefor being the nonresidence of the defendant and an attachment or garnishment was issued and served upon this plaintiff under and by virtue of such suit. Judgment was entered against W. D. Sanders on September 19th, 1927, by Judge Howard Hayes, one of the Judges of the Municipal Court of Chicago, for $7,589.81. W. D. Sanders having been served in the case by publication and having defaulted, the attachment was sustained and at the present time the case stands continued generally. The National Fire Insurance Company having answered in that garnishment at the time of the service of the writ upon it, nothing was due under the policy.

VII.

That the said W. D. Sanders has advised the plaintiff that the building described in the policy above mentioned, constituted and was his homestead at the time of the destruction by fire, and that as his homestead the proceeds of the policy of insurance mentioned, under the laws and Constitution of the State of Texas, would be exempt to him, and that the proceeds of the household goods were likewise exempt, in and to the proceeds of such policy, and has stated that he would attempt to

hold this plaintiff for the proceeds of such policy even though this plaintiff might be held liable to Armour Fertilizer Works in its suit above described.

VIII.

That the said W. D. Sanders has not entered any appearance in the garnishment suit instituted by Armour Fertilizer Works in the Municipal Court of Cook County, Illinois, nor has any personal process been served upon him in such suit, according to plaintiff's information from its attorneys at Chicago, Illinois, which said information it alleges to be true.

IX.

That two or more persons, citizens of different states, are claiming the proceeds of such policy, that is to say, W. D. Sanders claims such proceeds as exempt to him under the Constitution and laws of the State of Texas and Armour Fertilizer Works claims such proceeds under its judgment against W. D. Sanders and the garnishment which it has run upon the National Fire Insurance Company in its suit in the Municipal Court of Cook County, Illinois. That the proceeds of such policy exceed the sum of $500.00 and as stated aggregate and are the sum of $3,400.00.

X.

The National Fire Insurance Company tenders into the registry of this court said sum of $3,400.00 filing this interpleader and making such tender for the purpose of being relieved against any double liability

under such policy and as a result of the settlement which it has made under such policy, on account of the conflicting claims of the two defendants in and to the money thus deposited into the registry of this court.

XI.

That this court, under the laws of the United States, is the only court which has exclusive jurisdiction of the several conflicting claimants in and to such fund thus deposited in the registry of this court, and this court also, under the laws of the United States, has the power by injunctive relief, to enjoin the said Armour Fertilizer Works, one of the defendants herein, from any further prosecution of its garnishment suit which it has instituted in the Municipal Court of Chicago, Illinois, as above described.

XII.

Plaintiff says that notice should issue requiring the defendants named herein to interplead and set up their respective rights in and to the money deposited in the registry of this court and that this plaintiff should be granted a discharge from other and further liability under said policy or on account of the settlement which it made with the said W. D. Sanders on account of such loss by fire, and that this court should issue its injunction enjoining such Armour Fertilizer Works from any further action in or any further prosecution of the suit instituted by it and the garnishment run by it in the Municipal Court of Cook County;

Illinois, as heretofore described since the said Armour Fertilizer Works can be and should be required to prosecute its rights exclusively before this Honorable Court, which under the laws of the United States, has exclusive jurisdiction over the several claimants in and to the fund deposited in the registry of this court, and that this court should enter all other and further appropriate orders, the purpose and effect of which would be to stop other proceedings than this suit and require the several claimants to this fund thus deposited in the registry of this court to present before this court their several rights and claims in and to the fund thus deposited.

Wherefore, plaintiff prays that notice issue to the defendants and each of them requiring them to interplead herein and set up their respective rights in and to the $3,400.00 deposited in the registry of this court by the plaintiff, that plaintiff be discharged from any other or further liability under such policy on account of such loss by fire as the result of the settlement mentioned and the deposit of the money representing that settlement into the registry of this court and that this court issue its writ of injunction prohibiting the defendant, Armour Fertilizer Works, from further prosecuting or attempting to prosecute or taking any other or further action in anywise connected with the garnishment against National Fire Insurance Company pending in the Municipal Court of Chicago, Illinois, in such suit No. 1413423, described in this bill in equity, all to the end that the respective rights of the respective

claimants in and to the fund herein deposited, these claimants being citizens of different states, the amount in controversy being in excess of the sum of $500.00 to the end that this plaintiff may be protected from double liability and to the end that the money thus deposited into the registry of this court shall be by this court awarded to the person who shows the better right to it under this interpleader and the claim of such claimants filed herein and the plaintiff further asks for general relief in connection herewith, including the awarding to it of its costs and attorney's fees in a reasonable sum and amount, for all of which relief the plaintiff prays and further prays for general relief in connection therewith.

WILL C. THOMPSON,
KEENEY & DALBY,
*Attorneys for Plaintiff.*

*The State of Texas, County of Dallas.*

Before me, the undersigned authority, on this day personally appeared Will C. Thompson, who on his oath says that he is the attorney for the National Fire Insurance Company, the plaintiff herein, that the National Fire Insurance Company, a corporation, is unable to make an affidavit for itself to this petition. That he is acquainted with the facts set out in the foregoing petition, knows them to be true and is authorized to make this affidavit on behalf of such National Fire Insurance Company and upon his oath says that the facts set out in such petition are true.

Will C. Thompson.

Subscribed and sworn to before me, this the 9th day of June, A. D. 1928.

Pauline Rogers,

(Seal). Notary Public, Dallas County, Texas.

Endorsed:

No. 75 in Equity, District Court of the United States, Eastern District of Texas at Texarkana. National Fire Insurance Co. vs. W. D. Sanders, et al. Plaintiff's Bill in Equity. Filed June 12, 1928. F. A. King, Clerk U. S. District Court. By Mrs. E. S. Hughes, Deputy.

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**Plaintiff's Bill in Equity.**

(In Cause No. 76.)

*In the District Court of the United States for the Eastern District of Texas, Texarkana Division.*

*No. 876 in Equity.*

*Hartford Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

Now comes the Hartford Fire Insurance Company, a corporation duly incorporated under the laws of the State of Connecticut, complaining of W. D. Sanders, a resident of Bowie County, Texas, and Armour Fertilizer Works, a corporation incorporated under the laws of the State of Illinois, with its principal office in Cook County, Illinois, and with its president, vice-president, secretary, treasurer and manager located in

Cook County, Illinois, and would show to the court the following:

I.

The residence and citizenship of the plaintiff is Hartford, Connecticut.

II.

The residence and citizenship of the defendant, W. D. Sanders, is Bowie County, Texas, and the residence and citizenship of the defendant, Armour Fertilizer Works is Cook County, Illinois; the plaintiff being a citizen of the State of Connecticut, the defendant, Sanders, being a citizen of the State of Texas, and the defendant, Armour Fertilizer Works being a citizen of the State of Illinois.

III.

Plaintiff would show that this bill was originally filed in the Northern District of Texas, Dallas Division, pursuant to its understanding that the said W. D. Sanders was a resident of Dallas County, Texas, and that upon the hearing of such bill the said Sanders testified that he was a resident of Bowie County, Texas, and upon the motion of Armour Fertilizer Works, such bill as originally filed in the Northern District of Texas was dismissed on account of the residence of the said W. D. Sanders, without prejudice, however, to this plaintiff's right to refile this bill in the proper jurisdiction, and the plaintiff would therefore show that the residence of the said W. D. Sanders

having been fixed at Bowie County, Texas, by the adjudication of the United States District Court for the Northern District of Texas, Dallas Division, and notwithstanding such fact the said W. D. Sanders is temporarily residing in Dallas County, Texas, where service of process will have to be made upon him.

IV.

That the plaintiff heretofore issued to W. D. Sanders two certain insurance policies Nos. 635 and 640, each of these insurance policies insured against loss by fire, policy 635 insured a certain dwelling house for the term of three years from February 23rd, 1925, in the amount of $3,000.00 and policy 640 insured against loss by fire the same dwelling house in the amount of $2,000.00 for the term of three years from February 1st, 1926, W. D. Sanders being the insured and beneficiary under each of said policies.

V.

A fire was reported to the plaintiff as having occurred under these two policies on July 3rd, 1927, the report being that such fire injured and damaged the property described in those two policies, and following such fire this plaintiff has taken up with the said W. D. Sanders the question of the adjustment of the loss thus reported and has adjusted such loss with said Sanders at the sum of $2,550.00 under policy 635 and $1,700.00 under policy No. 640.

VI.

Plaintiff would further show that on July 18th, 1927, Armour Fertilizer Works filed a suit against W. D. Sanders in the Municipal Court of Cook County, Illinois, in which they claimed the sum of $7,589.81. The character of this action being an attachment, the number of the suit being 1413423, the ground therefor being the nonresidence of the defendant and an attachment or garnishment was issued and served upon this plaintiff under and by virtue of such suit. Judgment was entered against W. D. Sanders on September 19th, 1927, by Judge Howard Hayes, one of the judges of the Municipal Court of Chicago, for $7,589.81. W. D. Sanders having been served in the case by publication and having defaulted, the attachment was sustained and at the present time the case stands continued generally. The Hartford Fire Insurance Company having answered in that garnishment, at the time of the service of the writ upon it, nothing was due under the policy.

VII.

That the said W. D. Sanders has advised the plaintiff that the building described in the two policies above mentioned, constituted and was his homestead at the time of its destruction by fire, and that as his homestead the proceeds of the policies of insurance mentioned, under the laws and Constitution of the State of Texas, would be exempt to him, and that the proceeds of the household goods were likewise exempt

in and to the proceeds of such policies, and has stated that he would attempt to hold this plaintiff for the proceeds of such policies, even though this plaintiff might be held liable to Armour Fertilizer Works in its suit above described.

VIII.

That the said W. D. Sanders has not entered any appearance in the garnishment suit instituted by Armour Fertilizer Works in the Municipal Court of Cook County, Illinois, nor has any personal process been served upon him in such suit, according to plaintiff's information from its attorneys at Chicago, Illinois, which said information it alleges to be true.

IX.

That two or more persons, citizens of different states, are claiming the proceeds of such policies, that is to say, W. D. Sanders claims such proceeds as exempt to him under the Constitution and laws of the State of Texas and Armour Fertilizer Works claims such proceeds under its judgment against W. D. Sanders and the garnishment which it has run upon the Hartford Fire Insurance Company in its suit in the Municipal Court of Cook County, Illinois. That the proceeds of such policies exceed the sum of $500.00 and as stated, aggregate and are the sum of $4,250.00.

X.

The Hartford Fire Insurance Company tenders into the registry of this court said sum of $4,250.00,

filing this interpleader and making such tender for the purpose of being relieved against any double liability under such policies and as a result of the settlement which it has made under such policies, on account of the conflicting claims of the two defendants in and to the money thus deposited into the registry of this court.

XI.

That this court, under the laws of the United States, is the only court which has exclusive jurisdiction of the several conflicting claimants in and to such fund thus deposited in the registry of this court, and this court also, under the laws of the United States, has the power by injunctive relief, to enjoin the said Armour Fertilizer Works, one of the defendants herein, from any further prosecution of its garnishment suit which it has instituted in the Municipal Court of Chicago, Illinois, as above described.

XII.

Plaintiff says that notice should issue requiring the defendants named herein to interplead and set up their respective rights in and to the money deposited in the registry of this court and that this plaintiff should be granted a discharge from other and further liability under said policies or on account of the settlement which it made with the said W. D. Sanders on account of such loss by fire, and that this court should issue its injunction enjoining such Armour Fertilizer Works from any further action in or any further

prosecution of the suit instituted by it and the garnishment run by it in the Municipal Court of Cook County, Illinois, as heretofore described since the said Armour Fertilizer Works can be and should be required to prosecute its rights exclusively before this Honorable Court, which, under the laws of the United States has exclusive jurisdiction over the several claimants in and to the fund deposited in the registry of this court, and that this court should enter all other and further appropriate orders, the purpose and effect of which would be to stop other proceedings than this suit and require the several claimants to this fund thus deposited in the registry of this court to present before this court their several rights and claims in and to the fund thus deposited.

Wherefore, plaintiff prays that notice issue to the defendants and each of them requiring them to interplead herein and set up their respective rights in and to the $4,250.00 deposited in the registry of this court by the plaintiff, that plaintiff be discharged from any other or further liability under such policies on account of such loss by fire as the result of the settlement mentioned and the deposit of the money representing that settlement into the registry of this court and that this court issue its writ of injunction prohibiting the defendant Armour Fertilizer Works from further prosecuting or attempting to prosecute or taking any other or further action in anywise connected with the garnishment against Hartford Fire Insurance Company pending in the Municipal Court of Chicago, Illinois, in

such suit No. 1413423, described in this bill in equity, all to the end that the respective rights of the respective claimants in and to the fund herein deposited, these claimants being citizens of different states, the amount in controversy being in excess of the sum of $500.00 to the end that this plaintiff may be protected from double liability and to the end that the money thus deposited into the registry of this court shall be by this court awarded to the person who shows the better right to it under this interpleader and the claim of such claimants filed herein and the plaintiff further asks for general relief in connection herewith, including the awarding to it of its costs and attorney's fees in a reasonable sum and amount, for all of which relief the plaintiff prays, and further prays for general relief in connection therewith.

WILL C. THOMPSON,
KEENEY & DALBY,
*Attorneys for Plaintiff.*

*The State of Texas, County of Dallas.*

Before me, the undersigned authority, on this day personally appeared Will C. Thompson, who on his oath says that he is the attorney for the Hartford Fire Insurance Company, the plaintiff herein, that the Hartford Fire Insurance Company, a corporation, is unable to make an affidavit for itself to this petition. That he is acquainted with the facts set out in the foregoing petition, knows them to be true and is authorized to make this affidavit on behalf of such Hart-

ford Fire Insurance Company and upon his oath says that the facts set out in such petition are true.

Will C. Thompson.

Subscribed and sworn to before me, this the 9th day of June, A. D. 1928.

(Seal) Pauline Rogers,
Notary Public, Dallas County, Texas.

Endorsed:

No. 76 in Equity. District Court of the United States, Eastern District of Texas, at Texarkana. Hartford Fire Insurance Co. vs. W. D. Sanders, et al. Plaintiff's Bill in Equity. Filed June 12, 1928. F. A. King, Clerk U. S. District Court. By Mrs. E. S. Hughes, Deputy.

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**Answer of Armour Fertilizer Works, Constituting a Special Appearance for the Purpose of Objecting to the Jurisdiction of the Court.**

(In Cause No. 75.)

*In the District Court of the United States for the Eastern District of Texas, Texarkana Division.*

*No. 75 in Equity.*

*National Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

Now comes Armour Fertilizer Works, one of the defendants in the above styled and numbered cause and specially appears herein at this time for the sole

and only purpose of showing to the court that it does not have jurisdiction of this defendant and that it does not have jurisdiction to proceed further herein other than to dismiss this suit, for the following reasons, to-wit:

1.

This defendant is a non-resident of the State of Texas and has not in anywise submitted itself to the jurisdiction of the court. No service of process has been had upon this defendant within the State of Texas. The only manner in which jurisdiction over the person of this defendant has been sought to be obtained is under and by virtue of an order heretofore entered by this court requiring this defendant to appear, plead and answer herein and show cause why a temporary injunction should not be granted as prayed for in plaintiff's bill, and the act of the United States marshal in Illinois in serving such order, together with a subpoena issued from this court upon this defendant. The proceedings had were in conformity with a purported Act of Congress of the United States, Title 28, Section 43, paragraph 26, U. S. C. A., including the Amendment of the Act of May 8, 1926, 44 Statutes 416. The act of Congress under which these proceedings were had purports to give this court power to act in the manner stated and to enjoin further proceedings already instituted in the Municipal Court of Chicago, Illinois. It appears from the face of plaintiff's bill that suit has been instituted by this defend-

ant against the defendant Sanders in the Municipal Court of Chicago, Illinois, to recover a debt, that non-resident notice has been issued, attachment served upon the plaintiff in this bill, and judgment entered against Sanders sustaining the attachment prior to the institution of this suit, thereby placing into the jurisdiction of the Municipal Court of Chicago, Illinois, the funds heretofore tendered into this court by this plaintiff. The act of Congress together with the amendment thereto in so far as it attempts to permit this court to acquire jurisdiction of the subject matter of this case and of this defendant, a non-resident of this state, by virtue of service upon it of process without the state, and in so far as it attempts to permit this court to deprive the Municipal Court of Chicago, Illinois, of its jurisdiction once obtained, and enjoin the proceedings therein, is unconstitutional, void and of no force and effect, and therefore all acts taken by this court in conformity therewith, including the issuance in this court of the subpoena and the order to show cause why an injunction should not be granted, together with the service of such subpoena and order upon this defendant within the State of Illinois and outside of the territorial jurisdiction of this court, are and were void and of no force and effect whatsoever, and this court ought not to take cognizance of this case, jurisdiction of the parties or subject matter, and especially jurisdiction over this defendant, and should dismiss this cause.

2.

The purported act of Congress, together with the amendment thereto referred to, and under which this proceeding is brought, is unconstitutional in so far as the same attempts to confer jurisdiction upon this court and enjoin the proceedings already instituted and pending in the Municipal Court of the State of Illinois at the time of the institution of this suit, for the reason that there is no power conferred upon this court or upon the Congress of the United States by the Constitution of the United States to confer upon this court any power by the exercise of which this court may enjoin or in any way interfere with the exercise of jurisdiction by a court of the sovereign State of Illinois, and therefore the act of Congress under which this proceeding is brought is in violation of the Tenth Amendment to the Constitution of the United States reserving to the respective states powers not delegated to the said United States by said Constitution.

3.

The act of Congress above referred to, together with the amendatory act, is unconstitutional in so far as the same attempts to confer jurisdiction upon this court to enjoin the proceedings already instituted and pending in the Municipal Court of the State of Illinois at the time of the filing of this suit, for the reason that such act deprives the proceedings in the State of Illinois of the full faith and credit guaranteed to such proceedings under and by virtue of Section 1,

Article 4 of the Constitution of the United States, and such act in so far as it attempts to empower this court to enjoin such proceedings and the act of this court in enjoining such proceedings are and would be violative of such section of the Constitution.

4.

The jurisdiction of this court is invoked solely under and by virtue of the act of Congress of the United States and the amendment thereto hereinbefore referred to. In any event a prerequisite to the exercise of jurisdiction under and by virtue of the act is that there be first deposited by the plaintiff into the registry of the court the money due under the policy. It appears from the face of the bill that the funds sought to be tendered herein, prior to the institution of this suit and the attempted tender thereof, were legally impounded by process of the Municipal Court of Chicago, Illinois. Such funds were made the basis of jurisdiction of such court and it appears from the face of the bill herein that said funds were at the time of the institution of this suit and the attempted tender into this court, and still are, legally impounded by process of the Municipal Court of Chicago, and therefore such funds cannot and could not be properly tendered into this court, and therefore the jurisdiction in any event of this court has not, does not and cannot, attach.

Wherefore, premises considered, this defendant prays that the subpoena heretofore served or attempted to be served upon this defendant in the State

of Illinois, together with the order entered by this court to show cause why an injunction should not be granted, and the service thereof upon this defendant in the State of Illinois, be in all things vacated, quashed, set aside and held for naught, and that this proceeding be dismissed, and that this defendant be discharged with its costs.

CANTEY, HANGER & MCMAHON,
*Attorneys for the Defendant,*
*Armour Fertilizer Works.*

*The State of Texas, County of Tarrant.*

Before me, the undersigned authority, on this day personally appeared Warren Scarborough, well known to me to be one of the attorneys for the defendant, Armour Fertilizer Works, in the above cause, who, being by me upon his oath first duly sworn did state that the matters set forth in the above and foregoing instrument are, within his knowledge, true and correct.

Warren Scarborough.

Sworn to and subscribed before me, on this the 30th day of June, A. D. 1928.

Helen Davis,
(Seal). Notary Public in and for Tarrant County, Texas.

Endorsed:

No. 75 Equity. In the United States District Court for the Eastern District of Texas, at Texarkana. National Fire Insurance Company vs. W. D. Sanders, et al. Special Appearance of Armour Fertilizer Works for the Purpose of Vacating and Quashing Subpoena and Order to Show Cause, and for Dismissal for Want of Jurisdiction. Filed July 2, 1928. F. A. King, Clerk, U. S. District Court. By Mrs. E. S. Hughes, Deputy.

**Answer of Armour Fertilizer Works, Constituting a Special Appearance for the Purpose of Objecting to the Jurisdiction of the Court.**

(In Cause No. 76.)

*In the District Court of the United States for the Eastern District of Texas, Texarkana Division.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

Now comes Armour Fertilizer Works, one of the defendants in the above styled and numbered cause and specially appears herein at this time for the sole and only purpose of showing to the court that it does not have jurisdiction of this defendant and that it does not have jurisdiction to proceed further herein other than to dismiss this suit, for the following reasons, to-wit:

1.

This defendant is a nonresident of the State of Texas and has not in anywise submitted itself to the jurisdiction of the court. No service of process has been had upon this defendant within the State of Texas. The only manner in which jurisdiction over the person of this defendant has been sought to be obtained is under and by virtue of an order heretofore entered by this court requiring this defendant to appear, plead and answer herein and show cause why a temporary

injunction should not be granted as prayed for in plaintiff's bill, and the act of the United States marshal in Illinois in serving such order together with a subpoena issued from this court upon this defendant. The proceedings had were in conformity with a purported Act of Congress of the United States, Title 28, Section 43, paragraph 26, U. S. C. A., including the amendment of the Act of May 8, 1926, 44 Statutes 416. The act of Congress under which these proceedings were had purports to give this court power to act in the manner stated and to enjoin further proceedings already instituted in the Municipal Court of Chicago, Illinois. It appears from the face of plaintiff's bill that suit has been instituted by this defendant against the defendant Sanders in the Municipal Court of Chicago, Illinois, to recover a debt, that nonresident notice has been issued, attachment served upon the plaintiff in this bill, and judgment entered against Sanders sustaining the attachment prior to the institution of this suit, thereby placing into the jurisdiction of the Municipal Court of Chicago, Illinois, the funds heretofore tendered into this court by this plaintiff. The act of Congress together with the amendment thereto in so far as it attempts to permit this court to acquire jurisdiction of the subject matter of this case and of this defendant, a nonresident of this state, by virtue of service upon it of process without the state, and in so far as it attempts to permit this court to deprive the Municipal Court of Chicago, Illinois, of its jurisdiction once obtained, and enjoin the proceedings therein, is unconstitutional, void

and of no force and effect, and therefore all acts taken by this court in conformity therewith, including the issuance in this court of the subpoena and the order to show cause why an injunction should not be granted, together with the service of such subpoena and order upon this defendant within the State of Illinois and outside of the territorial jurisdiction of this court, are and were void and of no force and effect whatsoever, and this court ought not to take cognizance of this case, jurisdiction of the parties or subject matter, and especially jurisdiction over this defendant, and should dismiss this cause.

2.

The purported act of Congress, together with the amendment thereto referred to, and under which this proceeding is brought, is unconstitutional in so far as the same attempts to confer jurisdiction upon this court and enjoin the proceedings already instituted and pending in the Municipal Court of the State of Illinois at the time of the institution of this suit, for the reason that there is no power conferred upon this court or upon the Congress of the United States by the Constitution of the United States to confer upon this court any power by the exercise of which this court may enjoin or in any way interfere with the exercise of jurisdiction by a court of the sovereign State of Illinois, and therefore the act of Congress under which this proceeding is brought is in violation of the Tenth Amendment to the Constitution of the United States reserving

to the respective states powers not delegated to the said United States by said Constitution.

3.

The act of Congress above referred to, together with the amendatory act, is unconstitutional in so far as the same attempts to confer jurisdiction upon this court to enjoin the proceedings already instituted and pending in the Municipal Court of the State of Illinois at the time of the filing of this suit, for the reason that such act deprives the proceedings in the State of Illinois of the full faith and credit guaranteed to such proceedings under and by virtue of Section 1, Article 4 of the Constitution of the United States, and such act in so far as it attempts to empower this court to enjoin such proceedings and the act of this court in enjoining such proceedings are and would be violative of such section of the Constitution.

4.

The jurisdiction of this court is invoked solely under and by virtue of the act of Congress of the United States and the amendment thereto hereinbefore referred to. In any event a prerequisite to the exercise of jurisdiction under and by virtue of the act is that there be first deposited by the plaintiff into the registry of the court the money due under the policy. It appears from the face of the bill that the funds sought to be tendered herein, prior to the institution of this suit and the attempted tender thereof, were legally im-

pounded by process of the Municipal Court of Chicago, Illinois. Such funds were made the basis of jurisdiction of such court and it appears from the face of the bill herein that said funds were at the time of the institution of this suit and the attempted tender into this court, and still are, legally impounded by process of the Municipal Court of Chicago, and therefore such funds cannot and could not be properly tendered into this court, and therefore the jurisdiction in any event of this court has not, does not and cannot attach.

Wherefore, premises considered, this defendant prays that the subpoena heretofore served or attempted to be served upon this defendant in the State of Illinois, together with the order entered by this court to show cause why an injunction should not be granted, and the service thereof upon this defendant in the State of Illinois, be in all things vacated, quashed, set aside and held for naught, and that this proceeding be dismissed, and that this defendant be discharged with its costs.

CANTEY, HANGER & MCMAHON,
*Attorneys for the Defendant, Armour Fertilizer Works.*

*The State of Texas, County of Tarrant.*

Before me, the undersigned authority, on this day personally appeared Warren Scarborough, well known to me to be one of the attorneys for the defendant, Armour Fertilizer Works, in the above cause, who, being by me upon his oath first duly sworn did state that

the matters set forth in the above and foregoing instrument are, within his knowledge, true and correct.

Warren Scarborough.

Sworn to and subscribed before me, on this the 30th day of June, A. D. 1928.

Helen Davis,

(Seal) Notary Public in and for Tarrant County, Texas.

Endorsed:

No. 76 Equity. In the United States District Court for the Eastern District of Texas, at Texarkana. Hartford Fire Insurance Company vs. W. D. Sanders, et al. Special Appearance of Armour Fertilizer Works for the Purpose of Vacating and Quashing Subpoena and Order to Show Cause, and for Dismissal for Want of Jurisdiction. Filed July 2, 1928. F. A. King, Clerk U. S. District Court. By Mrs. E. S. Hughes, Deputy.

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**Answer of the Defendant, Armour Fertilizer Works.**

(In Cause No. 75.)

*In the District Court of the United States for the Eastern District of Texas, Texarkana Division.*

*No. 75 in Equity.*

*National Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

To the Honorable Judge of said Court:

Now comes Armour Fertilizer Works, one of the defendants in the above styled and numbered cause,

and appears and answers herein, subject only to the action of the court upon its special appearance herein, and upon its motion challenging the jurisdiction of this court, and to quash the substituted service upon this defendant, and appears and answers herein only because of the court's action upon such appearance and motions, and at all times excepting thereto, and for answer to said bill filed herein by the plaintiff, and for answer to the answer filed herein by the defendant W. D. Sanders, respectfully shows to the court as follows, to-wit:

1.

It appears from the plaintiff's bill on file herein that this is a suit in the nature of an interpleader, brought by the plaintiff under the provisions of Title 28, Section 43, Paragraph 26, U. S. C. A., including the Amendment of the Act of May 8, 1926, 44 Statutes 416; said act provides that jurisdiction is dependent upon a number of facts which must appear to the court, and, included among such necessary facts or allegations which must be shown, it is provided:

> "That two or more adverse claimants, citizens of different states, are claiming to be entitled to such money or property, or the penalty of such bond, or to such insurance or benefit;"

It further appears from said bill that this defendant is claiming said funds by virtue of a suit instituted prior to the institution of this suit, which suit was instituted in the Municipal Court of Chicago, Illinois.

and is more fully described in said bill; that said suit was against the other defendant, W. D. Sanders, or other alleged claimant to said fund, and that prior to the institution of this suit service of process by publication was had upon said defendant Sanders and that the funds in question were attached or garnisheed under process of said Municipal Court of Chicago, Illinois; that the other defendant, W. D. Sanders, is alleged to be claiming said funds under the homestead exemption provision of the laws and Constitution of the State of Texas. It thus appears from said bill that the claim of this defendant to said funds is only such claim as the defendant, W. D. Sanders, has in and to such funds, and that all of the parties hereto are before the Municipal Court of Chicago, Illinois, at least to the extent of the funds which the plaintiff tenders into court herein, and hence there are not two or more adverse claimants to said funds as contemplated by said statute, and therefore this court has no jurisdiction of this cause of action and no jurisdiction of this defendant nor the power to issue process for this defendant.

2.

For further cause this defendant respectfully shows to the court that the bill filed herein by the plaintiff is without equity and does not state or show a proper cause of action and does not state or show a state of facts authorizing it to maintain an interpleader suit hereon; that the aforementioned statute is

merely declaratory of the common law and does not in fact give or purport to give the right to maintain an interpleader suit under the facts shown by plaintiff's bill.

3.

This defendant would further show to the court that the statute hereinabove mentioned provides in effect that a condition precedent to the exercise of jurisdiction in the manner provided for in that statute is that there shall be first deposited by the plaintiff into the registry of this court the money due under said policy; that it appears from said bill that the funds sought to be tendered herein, prior to the institution of this suit and the attempted tender thereof, had been legally impounded by the process of the Municipal Court of Chicago, Illinois. That said funds were made the basis of jurisdiction of said Municipal Court of Chicago and it appears from said bill that said funds at the time of the institution of this suit and the attempted tender of said funds into this court were, and are still, legally impounded by the process of said Municipal Court of Chicago, and therefore could not be and are not properly tendered into this court, and because of such fact this court does not have jurisdiction of this cause or of the person of this defendant.

4.

This defendant further shows to the court that the injunctive relief prayed for by the plaintiff herein

should be denied and this defendant should not be compelled to refrain from further prosecution of the suit heretofore filed in the Municipal Court of Chicago, and should not be compelled to answer and plead in this court, because said bill filed herein by the plaintiff is wholly without equity in that it appears from the face of said bill that the plaintiff insurance company and the defendant, W. D. Sanders, as well as this defendant, are legally before and subject to the jurisdiction and orders of the said Municipal Court of Chicago, and that the jurisdiction of such court over all of the parties hereto attached long prior to the institution of this suit. It further appears from said bill that prior to the institution of this suit judgment was rendered against the defendant W. D. Sanders in favor of this defendant, and that the attachment against the plaintiff herein was sustained, and that any judgment, order or decree entered by the said Municipal Court of Chicago, Illinois, the first court to acquire jurisdiction of the parties hereto in relation to the matters set forth in the plaintiff's bill, would be binding and conclusive upon all of the parties hereto, and would afford to the plaintiff herein an absolute and certain defense upon or to any cause of action which might thereafter be asserted against the plaintiff herein by the defendant Sanders upon the claims which the plaintiff alleges the said W. D. Sanders is asserting to said funds; that by virtue of these facts, the plaintiff herein has a full, plain, complete and adequate remedy at law, and could obtain all the relief by such

remedy which could be afforded to it by this court, even if this court had jurisdiction of this cause of action and of this defendant, as if claimed by plaintiff.

5.

This defendant would further show to the court that under Article 4, Section 1 of the United States Constitution, the judicial acts and proceedings of the said Municipal Court of Chicago, Illinois, are entitled to full faith and credit; that this court is without power or jurisdiction under the facts as alleged by the plaintiff's bill herein, to assume jurisdiction over this defendant and to enjoin this defendant from further prosecuting said cause of action in the Municipal Court of Chicago, because any such action on the part of this court would be a denial to this defendant of the rights and powers afforded it under said suit in the Municipal Court of Chicago and the judgment heretofore rendered therein, and would constitute a violation of the full faith and credit clause of the United States Constitution. In this connection, defendant would further show to the court that the plaintiff herein does not allege that the defendant, W. D. Sanders is making any claim to said fund which would be valid against the judgment entered or to be entered by the Municipal Court of Chicago, and for this reason said bill wholly fails to state a proper case for interpleader, and is without equity.

6.

This court ought not to grant the temporary injunction sought herein for the reason that the act of Congress and the amendment thereto under which these proceedings are instituted by the plaintiff, and under which the injunctive relief is sought, is unconstitutional and void in so far as such act of Congress purports to give this court jurisdiction under the facts herein, and particularly in so far as it purports to vest this court with jurisdiction to enjoin the proceedings in the Municipal Court of Chicago, for the reasons fully contained and set forth in the special appearance heretofore made by this court for the purpose of vacating, setting aside and quashing the proceedings had in this cause.

Wherefore, for each and all of the above and foregoing reasons, this defendant prays the court to dismiss this suit.

7.

This defendant further shows to the court that the answer filed herein by the defendant W. D. Sanders is without equity and should be dismissed and stricken, for the reason that even if the property covered by said policies of insurance was exempt to the said Sanders, under the laws of the State of Texas (which fact is not admitted but denied), that said exemption should not and would not extend to and be available to the said defendant as against the lien and claim of this defendant.

8.

For further answer herein this defendant admits the allegations with reference to the incorporation and residence of the plaintiff, and with reference to this defendant. It denies the allegations with reference to the residence of the defendant, W. D. Sanders, and alleges that the said Sanders is not a citizen and resident of the Eastern District of Texas, nor the Texarkana Division thereof, but is at this time a citizen and resident of the Northern District of Texas, living and residing in Dallas, Dallas County, Texas; that the said Sanders abandoned his residence and home in the Eastern District of Texas prior to the institution of this suit.

This defendant denies that the residence of said W. D. Sanders has been judicially determined, and alleges that the said District Court of the Northern District of Texas, in the suit mentioned in paragraph 3 of the plaintiff's bill, merely determined that said Sanders did not live within the Northern District of Texas at that time, and we find that determined at a time prior to the institution of this suit.

9.

This defendant admits the allegations as contained in paragraphs 4, 5, and 6 of said bill, except that this defendant denies that the plaintiff answered in said suit in Chicago that nothing was due under said policies.

10.

Defendant denies the allegations contained in paragraph 7 of said bill of complaint, and alleges in this connection that the proceeds from such insurance were not exempt to the said defendant W. D. Sanders, and that the property, upon which such policies of insurance were issued, was not, at the time of the destruction thereof by fire, the homestead of the defendant W. D. Sanders, and that if such property had been his homestead the same had been abandoned by him as such prior to said fires.

11.

With reference to the allegations contained in paragraph 8 of said bill of complaint, this defendant is without knowledge at this time, and therefore neither admits nor denies said allegations.

12.

With reference to the allegations contained in paragraphs 9, 10, 11 and 12 of the bill of complaint this defendant denies that this is a proper cause for the maintenance of a bill of interpleader, and denies that this court has jurisdiction of this cause of action or of the parties hereto.

13.

This defendant would further show to the court that heretofore, to-wit: On or about the 18th day of July, 1927, it filed a suit in the Municipal Court of Chicago, Cook County, Illinois, styled Armour Fer-

tilizer Works, a corporation, trading as the Planters Fertilizer and Chemical Company, vs. W. D. Sanders, being numbered 1413423. Said suit was based upon eight promissory notes upon which there was due at that time, including principal, interest and attorney's fees, the sum of $7,589.81. That in connection with said proceedings a writ of attachment and garnishment was issued out of said court, and was, on the 19th day of July, 1927, served upon the plaintiff herein. That the defendant W. D. Sanders was duly cited by publication, in accordance with the laws of the State of Illinois, to appear and answer said suit. Judgment was taken against the said W. D. Sanders in said suit on September 19, 1927, for the sum of $7,589.81. That said case has not been dismissed as between this defendant and the plaintiff herein, garnishee in that suit. The judgment rendered in said suit is a valid and binding judgment and was procured in accordance with the laws of the State of Illinois, and is a valid judgment against the defendant W. D. Sanders to the extent of the funds impounded by said garnishment. That under the terms of said judgment the said attachment and garnishment against the plaintiff herein and against the defendant W. D. Sanders was sustained and all matters in dispute and with reference to the funds involved herein, were and have been judicially determined by said judgment. That in addition to the funds due by the complainant herein to the said Sanders, there were other funds impounded which totaled an amount in excess of

said judgment, and that at the time of the said judgment, and at the time of the service of process therein, the plaintiff was indebted to the defendant W. D. Sanders in the sum set forth in the bill of complaint in this suit.

13.

This defendant would further show to the court that the property covered by the policies of insurance referred to in the bill of complaint, was not, at the time of its destruction by fire, the homestead of the defendant W. D. Sanders and was not exempt to him as against the claims, judgments, liens and demands of this defendant.

14.

This defendant would further show to the court that prior to the institution of this suit the Municipal Court of Chicago, Illinois, had obtained jurisdiction of the defendant, and of the plaintiff herein, and of the defendant, W. D. Sanders, at least to the extent of the funds shown to be due from said plaintiff herein to the said Sanders, and that any judgment rendered in the said Municipal Court of Chicago is and would be binding upon the parties hereto and could be pleaded by the plaintiff as a bar to any claim or suit which the defendant Sanders might thereafter assert against the plaintiff herein.

15.

This defendant says further that by virtue of the suit hereinabove mentioned, which is filed prior to the institution of this suit in the Municipal Court of Chicago, in which the funds which plaintiff seeks to tender into court in this case and make the basis of jurisdiction herein, were impounded by garnishment and by the process of said Municipal Court of Chicago, and that by virtue of such proceedings this defendant acquired a lien, right, assignment, and claim upon and of said funds prior and superior to any claim which the defendant Sanders has or had to said funds. That said judgment and proceedings were legal and were had in accordance with the laws of the State of Illinois, and any judgment which might be entered therein could and would be complete defense as against the defendant Sanders in the assertion of any claim or demand on his part against the plaintiff herein. In this connection this defendant alleges, upon information and belief, that the defendant Sanders had abandoned the premises covered by said policies of insurance as a homestead prior to the time the same were destroyed by fire, and thereby waived and lost any rights he may have had at any time theretofore to claim said premises or the proceeds from insurance upon said premises as exempt to him under the laws of the State of Texas. Defendant further says that said exemption would not be available to said defendant Sanders in the Municipal Court of Illinois, or any other court outside of the State of Texas, and that in

the event this court should hold that said claim of exemption is available to the said defendant Sanders in this court, which claim is not admitted but denied; then in that event it would be unjust and inequitable to compel this defendant to appear in this court and submit itself to the jurisdiction of this court, because in so doing it would be deprived of its lien upon and right to said funds and could not enforce the same in this court to the same extent, that is, as a superior lien and claim to the exemption claimed by the defendant Sanders.

16.

With reference to the answer filed herein by the defendant Sanders, this defendant says that it is without knowledge as to the allegations of said defendant's residence, and is also without knowledge as to the allegations contained in paragraphs two and three of said answer.

With reference to paragraph four of said answer this defendant says that it believes upon information, and so alleges the fact to be, that the property and premises covered by said policies of insurance had been abandoned as said defendant's homestead prior to the destruction thereof by fire, and this defendant denies the allegations contained in said paragraph.

This defendant further says that said premises and property were not exempt to the defendant under the laws and Constitution of the State of Texas, and pleads especially that said exemption is not available to said defendant as against the claims and liens to said funds of this defendant.

This defendant admits the allegations contained in paragraphs five and six of said answer.

With reference to the other allegations in said answer, this defendant alleges that by reason of the suit hereinabove mentioned, in the Municipal Court of Chicago, Illinois, this defendant acquired a lien upon and right to said funds, which was and is prior and superior to the claim asserted by the defendant Sanders.

Wherefore, defendant prays that the temporary injunction heretofore granted on the day of A. D. 1928, be dissolved and vacated; that this suit be dismissed, and that this defendant go hence without day and recover all costs in this behalf expended; or, in the alternative, and in the event the court should hold that it has jurisdiction of this suit, that the rights of the defendant W. D. Sanders, in and to the funds which the plaintiff seeks to tender into court, if the said W. D. Sanders has any right therein, be adjudged secondary and inferior to the rights of this defendant, and that the clerk of this court be ordered to pay said sum to this defendant, and for costs of suit, and general and special relief.

CANTEY, HANGER & MCMAHON,
*Attorneys for Defendant, Armour Fertilizer Works.*

Endorsed:

No. 75 in Equity. In the United States District Court for the Eastern District, Texarkana Division. National Fire Insurance Company vs. W. D. Sanders, et al. Answer of the Defendant, Armour Fertilizer Works. Filed Sept. 3rd., 1928. F. A. King, Clerk, U. S. District Court, By Deputy.

## Answer of Armour Fertilizer Works Filed Subject to the Action of the Court Upon Its Special Appearance.

(In Cause No. 76.)

*In the District Court of the United States for the Eastern District of Texas, Texarkana Division.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

To the Honorable Judge of Said Court:

Now comes Armour Fertilizer Works, one of the defendants in the above styled and numbered cause, and appears and answers herein, subject only to the action of the court upon its special appearance herein, and upon its motion challenging the jurisdiction of this court, and to quash the substituted service upon this defendant, and appears and answers herein only because of the court's action upon such appearance and motions, and at all times excepting thereto, and for answer to said bill filed herein by the plaintiff, and for answer to the answer filed herein by the defendant, W. D. Sanders, respectfully shows to the court as follows, to-wit:

1.

It appears from the plaintiff's bill on file herein that this is a suit in the nature of an interpleader, brought by the plaintiff under the provisions of Title 28, Section 43, Paragraph 26, U. S. C. A., including

the amendment of the Act of May 8, 1926, 44 Statutes 416; said act provides that jurisdiction is dependent upon a number of facts which must appear to the court, and, included among such necessary facts or allegations which must be shown, it is provided:

> "That two or more adverse claimants, citizens of different states, are claiming to be entitled to such money or property, or the penalty of such bond, or to such insurance or benefit;"

It further appears from said bill that this defendant is claiming said funds by virtue of a suit instituted prior to the institution of this suit, which suit was instituted in the Municipal Court of Chicago, Illinois, and is more fully described in said bill; that said suit was against the other defendant, W. D. Sanders, or other alleged claimant to said fund, and that prior to the institution of this suit service of process by publication was had upon said defendant Sanders and that the funds in question were attached or garnisheed under process of said Municipal Court of Chicago, Illinois; that the other defendant, W. D. Sanders, is alleged to be claiming said funds under the homestead exemption provision of the laws and Constitution of the State of Texas. It thus appears from said bill that the claim of this defendant to said funds is only such claim as the defendant, W. D. Sanders, has in and to such funds, and that all of the parties hereto are before the Municipal Court of Chicago, Illinois, at least to the extent of the funds which the plaintiff tenders into court herein, and hence there are not two or more adverse

claimants to said funds as contemplated by said statute, and therefore this court has no jurisdiction of this cause of action and no jurisdiction of this defendant nor the power to issue process for this defendant.

2.

For further cause this defendant respectfully shows to the court that the bill filed herein by the plaintiff is without equity and does not state or show a proper cause of action and does not state or show a state of facts authorizing it to maintain an interpleader suit hereon; that the aforementioned statute is merely declaratory of the common law and does not in fact give or purport to give the right to maintain an interpleader suit under the facts shown by plaintiff's bill.

3.

This defendant would further show to the court that the statute hereinabove mentioned provides in effect that a condition precedent to the exercise of jurisdiction in the manner provided for in that statute in that there shall be first deposited by the plaintiff into the registry of this court the money due under said policy; that it appears from said bill that the funds sought to be tendered herein, prior to the institution of this suit and the attempted tender thereof, had been legally impounded by the process of the Municipal Court of Chicago, Illinois. That said funds were made the basis of jurisdiction of said Municipal Court of Chicago and it appears from said bill that said funds at the time of the institution of this suit and the attempted

tender of said funds into this court were, and are still, legally impounded by the process of said Municipal Court of Chicago, and therefore could not be and are not properly tendered into this court, and because of such fact this court does not have jurisdiction of this cause or of the person of this defendant.

4.

This defendant further shows to the court that the injunctive relief prayed for by the plaintiff herein should be denied and this defendant should not be compelled to refrain from further prosecution of the suit heretofore filed in the Municipal Court of Chicago, and should not be compelled to answer and plead in this court, because said bill filed herein by the plaintiff is wholly without equity in that it appears from the face of said bill that the plaintiff insurance company and the defendant, W. D. Sanders, as well as this defendant, are legally before and subject to the jurisdiction and orders of the said Municipal Court of Chicago, and that the jurisdiction of such court over all of the parties hereto attached long prior to the institution of this suit. It further appears from said bill that prior to the institution of this suit judgment was rendered against the defendant W. D. Sanders in favor of this defendant, and that the attachment against the plaintiff herein was sustained, and that any judgment, order or decree entered by the said Municipal Court of Chicago, Illinois, the first court to acquire jurisdiction of the parties hereto in relation to the matters set

forth in the plaintiff's bill, would be binding and conclusive upon all of the parties hereto, and would afford to the plaintiff herein an absolute and certain defense upon or to any cause of action which might thereafter be asserted against the plaintiff herein by the defendant Sanders upon the claims which the plaintiff alleges the said W. D. Sanders is asserting to said funds; that by virtue of these facts, the plaintiff herein has a full, plain, complete and adequate remedy at law, and could obtain all the relief by such remedy which could be afforded to it by this court, even if this court had jurisdiction of this cause of action and of this defendant, as if claimed by plaintiff.

5.

This defendant would further show to the court that under Article 4, Section 1 of the United States Constitution, the judicial acts and proceedings of the said Municipal Court of Chicago, Illinois, are entitled to full faith and credit; that this court is without power or jurisdiction under the facts as alleged by the plaintiff's bill herein, to assume jurisdiction over this defendant and to enjoin this defendant from further prosecuting said cause of action in the Municipal Court of Chicago, because any such action on the part of this court would be a denial to this defendant of the rights and powers afforded it under said suit in the Municipal Court of Chicago and the judgment heretofore rendered therein, and would constitute a violation of the full faith and credit clause of the United

States Constitution. In this connection, defendant would further show to the court that the plaintiff herein does not allege that the defendant W. D. Sanders is making any claim to said fund which would be valid against the judgment entered or to be entered by the Municipal Court of Chicago, and for this reason said bill wholly fails to state a proper case for interpleader, and is without equity.

6.

This court ought not to grant the injunction sought herein for the reason that the act of Congress and the amendment thereto under which these proceedings are instituted by the plaintiff, and under which the injunctive relief is sought, is unconstitutional and void in so far as such act of Congress purports to give this court jurisdiction under the facts herein, and particularly in so far as it purports to vest this court with jurisdiction to enjoin the proceedings in the Municipal Court of Chicago, for the reasons fully contained and set forth in the special appearance heretofore made by this court for the purpose of vacating, setting aside and quashing the proceedings had in this cause.

Wherefore, for each and all of the above and foregoing reasons, this defendant prays the court to dismiss this suit.

7.

This defendant further shows to the court that the answer filed herein by the defendant W. D. Sanders

is without equity and should be dismissed and stricken, for the reason that even if the property covered by said policies of insurance was exempt to the said Sanders, under the laws of the State of Texas (which fact is not admitted but denied), that said exemption should not and would not extend to and be available to the said defendant as against the lien and claim of this defendant.

8.

For further answer herein, this defendant admits the allegations with reference to the incorporation and residence of the plaintiff, and with reference to this defendant. It denies the allegations with reference to the residence of the defendant W. D. Sanders, and alleges that the said Sanders is not a citizen and resident of the Eastern District of Texas, nor the Texarkana Division thereof, but is at this time a citizen and resident of the Northern District of Texas, living and residing in Dallas, Dallas County, Texas; that the said Sanders abandoned his residence and home in the Eastern District of Texas prior to the institution of this suit.

This defendant denies that the residence of said W. D. Sanders has been judicially determined, and alleges that the said District Court of the Northern District of Texas, in the suit mentioned in paragraph 3 of the plaintiff's bill, merely determined that said Sanders did not live within the Northern District of Texas at that time, and we find that determined at a time prior to the institution of this suit.

9.

This defendant admits the allegations as contained in paragraphs 4, 5 and 6 of said bill, except that this defendant denies that the plaintiff answered in said suit in Chicago that nothing was due under said policies.

10.

Defendant denies the allegations contained in paragraph 7 of said bill of complaint, and alleges in this connection that the proceeds from such insurance were not exempt to the said defendant W. D. Sanders, and that the property, upon which such policies of insurance were issued, was not, at the time of the destruction thereof by fire, the homestead of the defendant W. D. Sanders, and that if such property had been his homestead the same had been abandoned by him as such prior to said fires.

11.

With reference to the allegations contained in paragraph 8 of said bill of complaint, this defendant is without knowledge at this time, and therefore neither admits nor denies said allegations.

12.

With reference to the allegations contained in paragraphs 9, 10, 11 and 12, of the bill of complaint, this defendant denies that this is a proper cause for the maintenance of a bill of interpleader, and denies

that this court has jurisdiction of this cause of action or of the parties hereto.

13.

This defendant would further show to the court that heretofore, to-wit: On or about the 18th day of July, 1927, it filed a suit in the Municipal Court of Chicago, Cook County, Illinois, styled Armour Fertilizer Works, a corporation, trading as the Planters Fertilizer and Chemical Company, versus W. D. Sanders, being numbered 1413423. Said suit was based upon eight promissory notes upon which there was due at that time, including principal, interest and attorney's fees, the sum of $7,589.81. That in connection with said proceedings a writ of attachment and garnishment was issued out of said court, and was, on the 19th day of July, 1927, served upon the plaintiff herein. That the defendant W. D. Sanders was duly cited by publication, in accordance with the laws of the State of Illinois, to appear and answer said suit. Judgment was taken against the said W. D. Sanders in said suit on September 19, 1927, for the sum of $7,589.81. That said case has not been dismissed as between this defendant and the plaintiff herein, garnishee in that suit. The judgment rendered in said suit is a valid and binding judgment and was procured in accordance with the laws of the State of Illinois, and is a valid judgment against the defendant W. D. Sanders to the extent of the funds impounded by said garnishment. That under the terms of said

judgment the said attachment and garnishment against the plaintiff herein and against the defendant W. D. Sanders was sustained and all matters in dispute and with reference to the funds involved herein, were and have been judicially determined by said judgment. That in addition to the funds due by the complainant herein to the said Sanders, there were other funds impounded which totaled an amount in excess of said judgment, and that at the time of the said judgment, and at the time of the service of process therein, the plaintiff was indebted to the defendant W. D. Sanders in the sum set forth in the bill of complaint in this suit.

13.

This defendant would further show to the court that the property covered by the policies of insurance referred to in the bill of complaint, was not, at the time of its destruction by fire, the homestead of the defendant W. D. Sanders and was not exempt to him as against the claims, judgments, liens and demands of this defendant.

14.

This defendant would further show to the court that prior to the institution of this suit the Municipal Court of Chicago, Illinois, had obtained jurisdiction of the defendant, and of the plaintiff herein, and of the defendant, W. D. Sanders, at least to the extent of the funds shown to be due from said plaintiff herein

to the said Sanders, and that any judgment rendered in the said Municipal Court of Chicago is and would be binding upon the parties hereto and could be pleaded by the plaintiff as a bar to any claim or suit which the defendant Sanders might thereafter assert against the plaintiff herein.

15.

This defendant says further that by virtue of the suit hereinabove mentioned, which is filed prior to the institution of this suit in the Municipal Court of Chicago, in which the funds which plaintiff seeks to tender into court in this case and make the basis of jurisdiction herein, were impounded by garnishment and by the process of said Municipal Court of Chicago, and that by virtue of such proceedings this defendant acquired a lien, right, assignment, and claim upon and of said funds prior and superior to any claim which the defendant Sanders has or had to said funds. That said judgment and proceedings were legal and were had in accordance with the laws of the State of Illinois and any judgment which might be entered therein could and would be complete defense as against the defendant Sanders in the assertion of any claim or demand on his part against the plaintiff herein. In this connection this defendant alleges, upon information and belief, that the defendant Sanders had abandoned the premises covered by said policies of insurance as a homestead prior to the time the same were destroyed by fire, and thereby waived and lost any rights he may

have had at any time theretofore to claim said premises or the proceeds from insurance upon said premises as exempt to him under the laws of the State of Texas. Defendant further says that said exemption would not be available to said defendant Sanders in the Municipal Court of Illinois, or any other court outside of the State of Texas, and that in the event this court should hold that said claim of exemption is available to the said defendant Sanders in this court, which claim is not admitted but denied, then in that event it would be unjust and inequitable to compel this defendant to appear in this court and submit itself to the jurisdiction of this court, because in so doing it would be deprived of its lien upon and right to said funds and could not enforce the same in this court to the same extent, that is as a superior lien and claim to the exemption claimed by the defendant Sanders.

16.

With reference to the answer filed herein by the defendant Sanders, this defendant says that it is without knowledge as to the allegations of said defendant's residence, and is also without knowledge as to the allegations contained in paragraphs two and three of said answer.

With reference to paragraph four of said answer this defendant says that it believes upon information, and so alleges the fact to be, that the property and premises covered by said policies of insurance had been abandoned as said defendant's homestead prior

to the destruction thereof by fire, and this defendant denies the allegations contained in said paragraph.

This defendant further says that said premises and property were not exempt to the defendant under the laws and Constitution of the State of Texas, and pleads especially that said exemption is not available to said defendant as against the claims and liens to said funds of this defendant.

This defendant admits the allegations contained in paragraphs five and six of said answer.

With reference to the other allegations in said answer, this defendant alleges that by reason of the suit hereinabove mentioned, in the Municipal Court of Chicago, Illinois, this defendant acquired a lien upon and right to said funds, which was and is prior and superior to the claim asserted by the defendant Sanders.

Wherefore, defendant prays that the temporary injunction heretofore granted on the .... day of ..... A. D. 1928, be dissolved and vacated, that this suit be dismissed, and that this defendant go hence without delay and recover all costs in this behalf expended; or, in the alternative; and in the event the court should hold that it has jurisdiction of this suit, that the rights of the defendant W. D. Sanders, in and to the funds which the plaintiff seeks to tender into court, if the said W. D. Sanders has any right therein, be adjudged secondary and inferior to the rights of this defendant, and that the clerk of this court be or-

dered to pay said sum to this defendant, and for costs of suit, and general and special relief.

CANTEY, HANGER & MCMAHON,
*Attorneys for Defendant, Armour Fertilizer Works.*

Endorsed:

No. 76 in Equity. In the United States District Court for the Eastern District, Texarkana Division. Hartford Fire Insurance Company, vs. W. D. Sanders, et al. Answer of the Defendant, Armour Fertilizer Works. Filed Sept. 3rd, 1928. F. A. King, Clerk, U. S. District Court. By ....., Deputy.

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**Answer and Petition of W. D. Sanders.**

(In Cause No. 75.)

*In the District Court of the United States, for the Eastern District of Texas, Texarkana Division.*

*No. 75 in Equity.*

*National Fire Insurance Co.,*

vs.

*W. D. Sanders, et al.*

Now comes W. D. Sanders, a resident of Dallas County, Texas, one of the defendants in the above entitled and numbered cause, and answering the plaintiff's interpleader petition filed herein, respectfully represents unto the court:

(1)

The residence of the defendant, W. D. Sanders is Bowie County, Texas.

(2)

That the plaintiff, National Fire Insurance Company heretofore issued to W. D. Sanders a certain policy of fire insurance, No. 163867, by the terms of which the plaintiff insured the defendant against loss by fire in the amount of two thousand ($2,000.00) dollars, on a two-story frame building located in the City of DeKalb, Texas, and two thousand ($2,000.00) dollars on the household furniture contained in such building, said policy being for the term of three years beginning September 1st, 1925. The defendant, W. D. Sanders, was and is the insured and beneficiary under such policy.

(3)

On July 3rd, 1927, the property insured under said policy mentioned above was totally destroyed by fire and following said destruction, the defendant, W. D. Sanders, entered into negotiations which culminated in the settlement by and between the plaintiff and defendant, by the terms of which the plaintiff agreed to pay to the defendant the sum of thirty-four hundred ($3,400.00) dollars in full settlement of its liability under and by reason of said policy.

(4)

This defendant shows to the court that the building described in the policy mentioned above constituted

and was his homestead at the time of the destruction by fire as set out above. That as such homestead, the proceeds of the policy of insurance mentioned above would be exempt to him under the laws and Constitution of the State of Texas. That likewise, the proceeds of the household goods were exempt, under the laws and Constitution of the State of Texas. That he has at all times and does now claim his exemption in and to the proceeds of such policy.

(5)

That on or about July 18, 1927, the defendant, Armour Fertilizer Works, filed a suit against this defendant, W. D. Sanders, in the Municipal Court of Cook County, Illinois, in which the said Armour Fertilizer Works, one of the defendants herein, claimed an indebtedness to it by the said defendant, W. D. Sanders, in the sum of $7,589.81, the number of said suit being 1413423, and the character of this action being one in attachment, the ground therefor being that the defendant, W. D. Sanders was a nonresident. That following said suit, the said defendant, Armour Fertilizer Works, caused a writ of attachment or garnishment to be issued and served upon the plaintiff, National Fire Insurance Company. That the said Armour Fertilizer Works is in said suits asserting the right to the proceeds of said fire insurance policy mentioned above.

(6)

That this defendant has not entered any appearance in the garnishment suit instituted by Armour Fertilizer

Works, in the Municipal Court of Cook County, Illinois, nor has any personal process been served upon him in said suit.

(7)

That the plaintiff, National Fire Insurance Company, has tendered into the registry of this court the sum of thirty-four hundred ($3,400.00) dollars and has asked that this court determine the ownership of said fund, which fund represents the proceeds of said fire insurance policy.

(8)

That by reason of the fact that the property which was the subject of insurance covered by said insurance policy was the homestead of the defendant, W. D. Sanders, the proceeds of the same which have been tendered into court by the plaintiff herein are exempt to the defendant, W. D. Sanders, under the laws and Constitution of the State of Texas, and his rights therein are superior and prior to the rights of the defendant, Armour Fertilizer Works.

That by reason of the matters set forth above, this defendant, W. D. Sanders, is entitled to the proceeds deposited in the registry of this court.

Wherefore, the premises considered, the defendant, W. D. Sanders, prays that the rights of Armour Fertilizer Works in and to said sum of thirty-four hundred ($3,400.00) dollars so deposited in the registry of this court, if the said Armour Fertilizer Works has any

rights therein, be adjudged secondary and inferior to the rights of the defendant, W. D. Sanders, therein, and that the said W. D. Sanders be declared to be the owner of said fund, and that an order be entered requiring the clerk of this court to pay to the said defendant, W. D. Sanders, said sum of $3,400.00.

This defendant, W. D. Sanders, further prays that the court enter any such other orders and decrees as may be suitable and proper.

RODGERS & RODGERS,
WINFREY & LANE,
MARTIN B. WINFREY,
*Attorneys for Defendant.*

Endorsed:

No. 75. In the District Court of the United States for the Eastern District of Texas, Texarkana Division. National Fire Insurance Co. vs. W. D. Sanders et al. Answer and Petition of W. D. Sanders. Filed July 2, 1928. F. A. King, Clerk, U. S. District Court. By Mrs. E. S. Hughes, Deputy.

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**Answer and Petition of W. D. Sanders.**

(In Cause No. 76.)

*In the District Court of the United States for the Eastern District of Texas, Texarkana Division.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

Now comes W. D. Sanders, a resident of Dallas County, Texas, one of the defendants in the above

entitled and numbered cause, and answering plaintiff's interpleader petition filed herein, respectfully represents unto the court:

(1)

The residence of the defendant, W. D. Sanders is Bowie County, Texas.

(2)

That the plaintiff, Hartford Fire Insurance Company, heretofore issued to W. D. Sanders two certain insurance policies Nos. 635 and 640, by the terms of which the plaintiff insured the defendant against loss by fire; policy 635 insured a certain dwelling house for the term of three years from February 23, 1925, in the amount of $3,000.00 and policy 640 insured against loss by fire the same dwelling house in the amount of $2,000.00, for the term of three years from February 1st, 1926. The defendant W. D. Sanders was, and is the insured and beneficiary under such of said policies.

(3)

On July 3, 1927, the property insured under said policies mentioned above was totally destroyed by fire and following said destruction the defendant, W. D. Sanders, entered into negotiations which culminated in the settlement by and between the plaintiff and defendant, by the terms of which the plaintiff agreed to pay to the defendant the sum of $4,250.00 in full

settlement of its liability under and by reason of said policies.

(4)

This defendant shows to the court that the building described in the policies mentioned above constituted and was his homestead at the time of the destruction by fire as set out above. That as such homestead, the proceeds of the policies of insurance mentioned above would be exempt to him under the laws and Constitution of the State of Texas. That he has at all times and does now claim his exemption in and to the proceeds of such policies.

(5)

That on or about July 18th, 1927, the defendant, Armour Fertilizer Works, filed a suit against this defendant, W. D. Sanders, in the Municipal Court of Cook County, Illinois, in which the said Armour Fertilizer Works, one of the defendants herein, claimed an indebtedness to it by the said defendant W. D. Sanders in the sum of $7,589.81, the number of said suit being 1413423, and the character of this action being one in attachment, the ground therefor being that the defendant, W. D. Sanders, was a nonresident. That following said suit, the said defendant, Armour Fertilizer Works, caused a writ of attachment or garnishment to be issued and served upon the plaintiff, Hartford Fire Insurance Company. That the said Armour Fertilizer Works is in said suits asserting the

right to the proceeds of said fire insurance policies mentioned above.

(6)

That this defendant has not entered any appearance in the garnishment suit instituted by Armour Fertilizer Works, in the Municipal Court of Cook County, Illinois, nor has any personal process been served upon him in said suit.

(7)

That the plaintiff, Hartford Fire Insurance Company, has tendered into the registry of this court the sum of $4,250.00 and has asked that this court determine the ownership of said fund, which fund represents the proceeds of said fire insurance policies.

(8)

That by reason of the fact that the property which was the subject of insurance covered by said insurance policies was the homestead of the defendant, W. D. Sanders, the proceeds of the same which have been tendered into court by the plaintiff herein are exempt to the defendant, W. D. Sanders, under the laws and Constitution of the State of Texas, and his rights therein are superior and prior to the rights of the defendant, Armour Fertilizer Works.

That by reason of the matters set forth above, this defendant, W. D. Sanders, is entitled to the proceeds deposited in the registry of this court.

Wherefore, the premises considered, the defendant, W. D. Sanders, prays that the rights of Armour Fertilizer Works in and to said sum of $4,250.00 so deposited in the registry of this court, if the said Armour Fertilizer Works has any rights therein, be adjudged secondary and inferior to the rights of the defendant, W. D. Sanders, therein, and that the said W. D. Sanders be declared to be the owner of said fund, and that an order be entered requiring the clerk of this court to pay to the said defendant, W. D. Sanders, this said sum of $4,250.00.

This defendant, W. D. Sanders, further prays that the court enter any such other orders and decrees as may be suitable and proper.

RODGERS & RODGERS,
WINFREY & LANE,
MARTIN B. WINFREY,
*Attorneys for Defendant.*

Endorsed:

No. 76. In the District Court of the United States for the Eastern District of Texas, Texarkana Division. Hartford Fire Insurance Co. vs. W. D. Sanders, et al. Answer and Petition of W. D. Sanders. Filed July 2, 1928. F. A. King, Clerk U. S. District Court. By Mrs. E. S. Hughes, Deputy.

**Plaintiff's Supplemental Bill of Interpleader.**

(In Cause No. 75.)

*In the District Court of the United States for the Eastern District of Texas, Texarkana Division.*

*No. 75 in Equity.*

*National Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

Now comes the National Fire Insurance Company, and files this supplement to its bill of interpleader and would show:

1.

That W. D. Sanders is the head of a family.

2.

That his wife, Mrs. W. D. Sanders, claims the proceeds, or some part of same, deposited in the registry of this court, as shown by her intervention herein filed August 4, 1928, claiming, so plaintiff believes, that she is entitled to such proceeds on account of a community interest therein.

3.

That said claim thus made constitutes and makes said Mrs. W. D. Sanders still another adverse claimant to said fund, so that she and W. D. Sanders and Armour Fertilizer Works are each now claiming said fund, as against this plaintiff.

4.

Wherefore, plaintiff prays as in its original bill, that each of said adverse claimants be required to inter-

plead herein, that it be discharged from all liability as to each of said claimants as the result of its tender into this court, with its costs and attorney's fees, as well as for all other relief prayed for in said original bill, and for general relief in connection therewith.

WILL C. THOMPSON,
THOMPSON, KNIGHT, BAKER & HARRIS,
*Attorneys for Plaintiff.*

*The State of Texas, County of Dallas.*

Before me, the undersigned authority, on this day personally appeared Will C. Thompson, who on oath, stated:

That he is one of the attorneys for National Fire Insurance Company in the above numbered and entitled cause, that he is duly authorized and qualified to make this affidavit; that he has read the foregoing answer and that the facts therein stated are within his knowledge true and correct; where stated as facts, and where stated on information and belief are believed to be true.

Will C. Thompson.

Subscribed and sworn to before me this 9th day of January, A. D. 1929.

Alice Tew,
(Seal) Notary Public, Dallas County, Texas.

Endorsed:

No. 75 in Equity. In the District Court of the United States, Eastern District of Texas, at Texarkana. National Fire Insurance Co. vs. W. D. Sanders, et al. Plaintiff's Supplemental Bill of Interpleader. Filed January 22, 1929. F. A. King, Clerk U. S. District Court. By Mrs. E. S. Hughes, Deputy.

## Plaintiff's Supplemental Bill of Interpleader.

(In Cause No. 76.)

*In the District Court of the United States for the Eastern District of Texas, Texarkana Division.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

Now comes the Hartford Fire Insurance Company and files this supplement to its bill of interpleader and would show:

1.

That W. D. Sanders is the head of a family.

2.

That his wife, Mrs. W. D. Sanders, claims the proceeds, or some part of same, deposited in the registry of this court, as shown by her intervention herein filed August 4, 1928, claiming, so plaintiff believes, that she is entitled to such proceeds on account of a community interest therein.

3.

That said claim thus made constitutes and makes said Mrs. W. D. Sanders still another adverse claimant to said fund, so that she and W. D. Sanders and Armour Fertilizer Works are each now claiming said fund, as against this plaintiff.

4.

Wherefore, plaintiff prays as in its original bill, that each of said adverse claimants be required to inter-

plead herein, that it be discharged from all liability as to each of said claimants is the result of its tender into this court, with its costs and attorney's fees, as well as for all other relief prayed for in said original bill, and for general relief in connection therewith.

WILL C. THOMPSON,
THOMPSON, KNIGHT, BAKER & HARRIS,
*Attorneys for Plaintiff.*

*The State of Texas, County of Dallas.*

Before me, the undersigned authority, on this day personally appeared Will C. Thompson, who on oath, stated:

That he is one of the attorneys for Hartford Fire Insurance Company in the above numbered and entitled cause, that he is duly authorized and qualified to make this affidavit; that he has read the foregoing answer and that the facts therein stated are within his knowledge true and correct, where stated as facts, and where stated on information and belief are believed to be true.

Will C. Thompson.

Subscribed and sworn to before me this 9th day of January, A. D. 1929.

Alice Tew,
(Seal) Notary Public, Dallas County, Texas.

Endorsed:

No. 76 in Equity. In the District Court of the United States, Eastern Dist. of Texas, at Texarkana. Hartford Fire Insurance Co. vs. W. D. Sanders, et al. Plaintiff's Supplemental Bill of Interpleader. Filed January 22, 1929. F. A. King, Clerk U. S. District Court. By Mrs. E. S. Hughes, Deputy.

## Judgment and Order of Injunction of July 2, 1928.

(In Cause No. 75.)

*In the District Court of the United States for the Eastern District of Texas, Texarkana Division.*

*No. 75 in Equity.*

*National Fire Insurance Company, Plaintiff,*

vs.

*W. D. Sanders, et al., Defendants.*

JULY 2ND, 1928.

On this day came on to be heard in the above styled and numbered cause the application of the plaintiff for a temporary injunction, enjoining and restraining the defendant, Armour Fertilizer Works, from further prosecuting a certain suit in the Municipal Court of Chicago, Cook County, Illinois, and upon a consideration of the same the court believes that said application is well taken and should be sustained;

It is further ordered, adjudged and decreed by the court that Armour Fertilizer Works be and it hereby is enjoined and restrained, pending further orders of this court, from prosecuting, or attempting to prosecute cause No. 1413423, in the Municipal Court of Chicago, Cook County, Illinois, the same suit described in the pleadings herein, and writ of injunction shall issue pursuant to this order; to which said action the defendant Armour Fertilizer Works excepted.

Then also came on to be heard the special appearance of the defendant Armour Fertilizer Works, which the court believes is not well taken:

It is, therefore, ordered, adjudged and decreed that the relief prayed for in the special appearance of the Armour Fertilizer Works be denied, and said defendant shall answer herein by August 25th, 1928, to which action the defendant Armour Fertilizer Works excepted.

W. L. ESTES,
*Judge.*

Endorsed:

In Equity, No. 75. In the U. S. District Court for the Eastern District of Texas, Texarkana Division. National Fire Insurance Company, Plaintiff, vs. W. D. Sanders, et al., Defendants. Judgment. Filed July 3, 1928. F. A. King, Clerk, U. S. District Court. By Mrs. E. S. Hughes, Deputy.

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**Judgment and Order of Injunction of July 2, 1928.**

(In Cause No. 76.)

*In the District Court of the United States for the Eastern District of Texas, Texarkana Division.*

*No. 76 in Equity.*

*The Hartford Fire Insurance Company, Plaintiff,*

vs.

*W. D. Sanders, et. al., Defendants.*

JULY 2ND, 1928.

On this day came on to be heard in the above styled and numbered cause the application of the plaintiff for a temporary injunction, enjoining and restrain-

ing the defendant, Armour Fertilizer Works, from further prosecuting a certain suit in the Municipal Court of Chicago, Cook County, Illinois, and upon a consideration of the same the court believes that said application is well taken and should be sustained;

It is further ordered, adjudged and decreed by the court that Armour Fertilizer Works be and it hereby is enjoined and restrained, pending further orders of this court, from prosecuting, or attempting to prosecute cause No. 1413423, in the Municipal Court of Chicago, Cook County, Illinois, the same suit described in the pleadings herein, and writ of injunction shall issue pursuant to this order; to which action the defendant Armour Fertilizer Works excepted.

Then also came on to be heard the special appearance of the defendant Armour Fertilizer Works, which the court believes is not well taken.

It is therefore, ordered, adjudged and decreed that the relief prayed for in the special appearance of the Armour Fertilizer Works be denied, and said defendant shall answer herein by August 25th, 1928; to which action the defendant Armour Fertilizer Works excepted.

W. L. ESTES,
*Judge.*

Endorsed:

In the U. S. District Court for the Eastern District of Texas, Texarkana Division. In Equity No. 76. The Hartford Fire Insurance Company, Plaintiff vs. W. D. Sanders, et al., Defendants. Judgment. Filed July 3, 1928. F. A. King, Clerk, U. S. District Court. By Mrs. E. S. Hughes, Deputy.

**Order Sustaining Bill of Interpleader, September 14, 1931.**

*In the United States District Court, Eastern District of Texas, Texarkana Division.*

*Consolidated Cases.*

*No. 75 in Equity.*

*National Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

On this, the 14th day of September, 1931, at a special term of this court, came on to be heard the above consolidated cases. Plaintiffs appeared through their attorneys and the defendants, W. D. Sanders and Mrs. W. D. Sanders, appeared through their attorneys, and the defendant, Armour Fertilizer Works, making a special appearance in each cause as shown by its special appearance filed herein on July 2, 1928, and presenting also its motion to dismiss subject to said special appearance filed herein on September 3, 1928. Said defendant, Armour Fertilizer Works, having presented to the court its special appearance as aforesaid, and its motion to dismiss subject thereto, and the court having heard and considered said special appearance and said motion to dismiss, and being fully advised in the premises, and it appearing to the court

that the Circuit Court of Appeals of the Fifth Circuit at New Orleans has heretofore held that the bill of interpleader filed herein by the plaintiff should be sustained by the court, and it further appearing to the court that the insurance companies should be discharged from further liability herein and awarded attorneys' fees and costs, without prejudice, however, to the rights of the defendants and each of them in and to their several contentions as to their rights in and to the money deposited in the registry of the court by the plaintiffs, and jurisdiction of this cause should be retained as to such interpleader action as between such defendants, and it further appearing to the court that the plaintiffs have expended as costs in this court the sum of three hundred fifty-three and 75/100 ($353.75) dollars, and that a reasonable attorneys' fees for plaintiffs in this consolidated cause is the sum of six hundred ($600.00) dollars.

It is, therefore, ordered, adjudged and decreed by the court that the special appearance of the defendant, Armour Fertilizer Works, in each of said causes, and the motion to dismiss by the defendant, Armour Fertilizer Works, in each of said causes are hereby overruled.

That the bills of interpleader filed herein be sustained, and that the National Fire Insurance Company and Hartford Fire Insurance Company be, and they are each hereby, discharged in this consolidated cause from any and all liability as a result of the tender which each has heretofore made into the registry of this

court, and each of said plaintiffs is hereby awarded and allowed the sum of four hundred seventy-six and 85/100 ($476.85) dollars out of the fund heretofore deposited by it in the registry of this court as its allowance for its costs and attorneys' fees in connection with the filing and prosecution by each of said plaintiffs of this bill of interpleader, which allowances shall be paid to the respective plaintiffs by the clerk of this court out of such funds on deposit, and such payments, when so made, shall be taxed as court costs.

It is further ordered, adjudged and decreed that this court retains jurisdiction of this consolidated cause, for the determination of the rights of the respective defendants in and to the funds on deposit in the registry of this court, as well as the final taxation of court costs; to all of which the defendant, Armour Fertilizer Works, in open court excepted.

RANDOLPH BRYANT,
*Judge.*

O. K. as to form:
WINFREY & LANE.
RODGERS & RODGERS,

O. K. as to form:
CANTEY, HANGER & McMAHON.

Endorsed:

In the United States District Court Eastern District of Texas, Texarkana Division. Consolidated Cases. National Fire Insurance Co. vs. W. D. Sanders, et al. No. 75 in Equity. Hartford Fire Ins. Company vs. W. D. Sanders, et al. No. 76 in Equity. Order Sustaining Bill of Interpleader and Discharging Plaintiffs. Filed Sept. 14th, 1931. F. A. King, Clerk, U. S. District Court. By .....

**Petition for Rehearing of Defendant Armour Fertilizer Works to the Order of September 14, 1931.**

*In the District Court of the United States for the Eastern District of Texas, Texarkana Division.*

*Consolidated Cases.*

*No. 75 in Equity.*

*National Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

To the Honorable Randolph Bryant, Judge of said Court:

Now comes Armour Fertilizer Works, one of the defendants in the above styled and numbered consolidated causes, and files this its petition for a rehearing, and for such petition shows to the court:

That heretofore, to-wit: on the 12th day of June, A. D. 1928, the plaintiff, National Fire Insurance Company, by its bill in equity, instituted suit in the United States District Court for the Eastern District of Texas, Texarkana Division, against W. D. Sanders and Armour Fertilizer Works, the said suit being styled National Fire Insurance Company vs. W. D. Sanders, *et al.*, and being No. 75 in equity, the nature of the plaintiff's cause of action being fully set out in its said

bill in equity filed herein and here referred to and made a part of this petition for rehearing.

That heretofore, to-wit: on the 12th day of June, A. D. 1928, the plaintiff, Hartford Fire Insurance Company, by its bill in equity, instituted suit in the United States District Court for the Eastern District of Texas, Texarkana Division, against W. D. Sanders and Armour Fertilizer Works, the said suit being styled Hartford Fire Insurance Company vs. W. D. Sanders, *et al.*, and being No. 76 in equity, the nature of the plaintiff's cause of action being fully set out in its said bill in equity filed herein and here referred to and made a part of this petition for rehearing.

That the defendant, Armour Fertilizer Works, on the 2nd day of July, A. D. 1928, entered special appearance in the case of National Fire Insurance Company vs. W. D. Sanders, *et al.*, No. 75 in equity, for the sole and only purpose of vacating and quashing the subpoena and order to show cause which had been served upon it, and for the further purpose of showing that this court did not have jurisdiction of the defendant, Armour Fertilizer Works, and was without jurisdiction to proceed with the said case further than to dismiss the same, for the reasons as set out in the said defendant's special appearance, which is here referred to and made a part hereof.

That the said defendant, Armour Fertilizer Works, also filed its special appearance on July 2nd, A. D. 1928, in the case of Hartford Fire Insurance Company vs. W. D. Sanders, *et al.*, No. 76 in equity, for the sole

and only purpose of showing that this court does not have jurisdiction of this defendant and further showing that it was without jurisdiction to proceed with this case further except to dismiss the same, for the reasons set out in its special appearance filed herein, which is here referred to and made a part hereof.

That the case of National Fire Insurance Company vs. W. D. Sanders, *et al.*, No. 75 in equity, and the case of Hartford Fire Insurance Company vs. W. D. Sanders, *et al.*, No. 76 in equity, were, pursuant to agreement by all parties, ordered by the court consolidated, and that on the 14th day of September, A. D. 1931, at a special term of this Honorable Court an order or judgment was entered by the court that the special appearance of the defendant, Armour Fertilizer Works, in each of the said causes, and motion to dismiss by the defendant, Armour Fertilizer Works, in each of said causes, were in all things overruled, and in which order or judgment of the court it was further decreed that the bills of interpleader filed by the plaintiffs should, in all things be sustained and that the said plaintiffs, National Fire Insurance Company and Hartford Fire Insurance Company, should be discharged in the consolidated causes from any and all liability as a result of the tender which each had theretofore made into the registry of this court; and further decreeing that each of said plaintiffs be awarded and allowed the sum of four hundred seventy-six and 85/100 ($476.85) dollars, out of the funds so deposited in the registry of this court as costs

and attorney's fees in connection with the filing and prosecuting by said plaintiffs of their bills of interpleader; and further decreeing that the court should retain jurisdiction of the said consolidated causes for the determination of the rights of the respective defendants in and to the funds on deposit in the registry of this court, as well as final taxation of the court costs, to all of which the defendant, Armour Fertilizer Works, in open court duly excepted.

That the said order and judgment of the court, above referred to, sustaining the bill of interpleader and discharging the plaintiffs, is filed among the papers of the said consolidated causes, and is here referred to and made a part of this motion for rehearing.

That the defendant, Armour Fertilizer Works, shows to the court that the said order and judgment of this Honorable Court, sustaining the bill of interpleader and discharging said plaintiffs above referred to, should be set aside, and that the defendant, Armour Fertilizer Works should be granted a rehearing of said cause, and of its said special appearances, and that on such rehearing of its said special appearances, that the said defendant, Armour Fertilizer Works be granted by proper order or judgment of this court, the relief prayed for by it in its said special appearances; and the defendant, Armour Fertilizer Works shows that it is entitled to have such rehearing granted by this court upon the following grounds and reasons:

1.

That the bill of interpleader filed by the plaintiff, National Fire Insurance Company, and the bill of interpleader filed by the plaintiff, Hartford Fire Insurance Company, each show upon their face that the said plaintiff, National Fire Insurance Company and Hartford Fire Insurance Company have an adequate remedy at law for the full protection of their rights, and interests, and that the facts alleged by the said plaintiffs in each of said bills show that a bill of interpleader is not the proper action which these plaintiffs are entitled, if any, to institute against this defendant.

2.

That from the face of each of the said bills of interpleader, filed by each of the said plaintiffs, it is apparent that the suits were instituted by the plaintiffs under a purported Act of the Congress of the United States, known as Title 28, Section 43, Par. 26, U. S. C. A., including the amendment of the Act of May, 1926, 44 Statute 416, and under the express provisions of the said statute there is no authority for the institution by the plaintiffs of the said bills of interpleader or interpleader suits; and that the said Act of Congress in so far as an attempt to permit this court to acquire jurisdiction of the subject matter in this case, of this defendant, is of no binding effect.

3.

That the said bills of interpleader and each of them show on their face that the defendant, Armour Fertilizer Works, has a vested claim, right and lien in and to the fund tendered into the registry of this

Honorable Court by virtue of the judgment of the Municipal Court of Chicago, Illinois, in favor of the defendant, Armour Fertilizer Works against the defendant, W. D. Sanders, and that to allow the prosecution by the plaintiffs of their respective bills of interpleader, is to do violence to the full faith and credit clause of the Constitution of the United States of America, and is in strict contravention thereof.

Wherefore, the defendant, Armour Fertilizer Works, prays this court to set aside the said order of this court sustaining the bills of interpleader of the plaintiffs, and grant a rehearing of the said cause, and of its said special appearances, on such terms as to this court shall seem just, and that on such rehearing that this Honorable Court will by proper order, judgment or decree, grant to the defendant, Armour Fertilizer Works, the relief prayed for in its said special appearances filed herein, and here referred to.

Respectfully submitted,

CANTEY, HANGER & MCMAHON,
*Attorneys for Defendant,*
*Armour Fertilizer Works.*

Endorsed:

In the District Court of the United States, for the Eastern District of Texas, Texarkana Division. Consolidated Cases. No. 75 in Equity. National Fire Insurance Co. vs. W. D. Sanders, et al. No. 76 in Equity. Hartford Fire Insurance Co. vs. W. D. Sanders, et al. Petition of the Defendant, Armour Fertilizer Works, for a Rehearing of its Special Appearances. Filed December 12, 1931. F. A. King, Clerk U. S. District Court. By Mrs. E. S. Hughes, Deputy.

## Order of July 15, 1932, Overruling Defendant Armour Fertilizer Works' Petition for Rehearing.

*In the District Court of the United States for the Eastern District of Texas, Texarkana Division.*

*Consolidated.*

*No. 75 in Equity.*

*National Fire Insurance Company,*

vs.

*W. D. Sanders et al.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

On this the 1st day of July, 1932, came on to be heard the petition for rehearing filed herein by Armour Fertilizer Works on the ..... day of ....., 1931, complaining of the order of the court entered on September 14, 1931, overruling its special appearance and motion to dismiss the bills of interpleader and sustaining said interpleader, and the court having considered said motion, is of the opinion that the same should be overruled.

It is therefore ordered, adjudged and decreed that said petition for rehearing be and the same is hereby overruled, to which the defendant Armour Fertilizer Works in open court duly excepted.

Entered this the day and date hereinabove provided.

RANDOLPH BRYANT,
*Judge.*

Endorsed:

In the United States District Court for the Eastern District of Texas, Texarkana Division. Consolidated. No. 75 in Equity. National Fire Insurance Company vs. W. D. Sanders, et al. No. 76 in Equity. Hartford Fire Insurance Company vs. W. D. Sanders, et al. Order Overruling Petition for Rehearing of Defendant Armour Fertilizer Works. Filed on 1st day of July, 1932. F. A. King, Clerk. By ....., Deputy.

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**Statement of the Evidence.**

*In the District Court of the United States for the Eastern District of Texas, at Texarkana.*

*Consolidated Cases.*

*No. 75 in Equity.*

*National Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

STATEMENT OF THE EVIDENCE.

Appearances:

Will Thompson (of the firm of Thompson, Knight, Baker & Harris, of Dallas) for National Fire Insurance Company and Hartford Fire Insurance Company:

Alvin H. Lane (of the firm Winfrey & Lane, Dallas, Texas) for W. D. Sanders and intervener, Mrs. W. D. Sanders.

Alfred McKnight and Warren Scarborough (of the firm of Cantey, Hanger & McMahon, Fort Worth, Texas) for Armour Fertilizer Works.

Be it remembered that upon the trial of the above styled and numbered cause at Texarkana, Texas, on September 14, 1931, before the Honorable Randolph Bryant, the following evidence was introduced, proceedings had and exceptions reserved, to-wit:

Mr. Scarborough: If the Court please, there is an order in the record consolidating these two cases, and I presume that we may proceed under that same order of consolidation.

The Court: Yes.

Mr. Thompson: I represented the plaintiffs in filing the bills. The parties hereto have entered into a written stipulation as to the facts to sustain venue of this court and the question of the allowance of attorneys' fees, which stipulation will be offered in evidence.

Thereupon Armour Fertilizer Works presented again to the court its motion by special appearance filed in each of said causes on July 2, 1928, and also its motion to dismiss in each of said causes, as contained in its answer filed on September 3, 1928. The special appearance and the motion to dismiss were overruled, to which the defendant Armour Fertilizer Works excepted.

Thereupon the court entered an order under date of September 14, 1931, overruling said special appearance and said motion to dismiss and sustaining bills of interpleader, to which defendant Armour Fertilizer Works excepted.

Mr. Scarborough: The parties hereto have entered into a written stipulation, which has been signed by all the parties through their attorneys of record, and which is self-explanatory. We wish to offer this stipulation in evidence.

*In the District Court of the United States for the Eastern District of Texas, Texarkana Division.*

*No. 75 in Equity.*

*National Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

Upon the trial of the above styled and numbered consolidated causes at Texarkana, Texas, on September 14, 1931, the following agreement was made between the parties:

1.

It is agreed that the residence and citizenship of all of the parties hereto is as set out in the plaintiffs' bills, and that the amount in controversy exceeds the sum of five hundred dollars.

2.

That the amounts tendered into court by the plaintiffs represent the amounts due by plaintiffs under fire insurance policies issued in the name of W. D. Sanders, the head of a family consisting of himself and wife, upon a house and furnishings at DeKalb, Texas. The defendant Armour Fertilizer Works does not agree that said insured property was the homestead of the defendants Mr. and Mrs. Sanders at the time of its destruction by fire, and this agreement is without prejudice to its contention that said property had been abandoned as a homestead before the fire.

3.

That a fire occurred under these policies, the amounts of which have been settled between the parties at and for the sums tendered into the registry of this court.

4.

That Armour Fertilizer Works filed a suit in the Municipal Court of Chicago, Illinois, a court of competent jurisdiction, in which it named as the original defendant W. D. Sanders, and issued and had published nonresident notice upon said W. D. Sanders in accordance with the laws of the State of Illinois, and issued and had served upon the legal agent at Chicago, Illinois, of each of the plaintiffs, a summons or citation in such garnishment suit; that W. D. Sanders has never appeared in such Municipal Court of Chicago, Illinois; that the Municipal Court of Chicago, Illinois, has rendered a judgment by default against W. D. Sanders; that W. D. Sanders has claimed and stated to these plaintiffs, as set out in his pleadings herein on file, that the money on deposit in the

registry of this court is exempt to him as the head of a family, constituting and being the proceeds of his homestead and their furnishings, and that he would institute proceedings against these plaintiffs for the recovery of such money.

5.

That at the time these writs of garnishment were issued and served upon the plaintiffs in these actions, the fire and loss had already occurred, and that whatever sum was due under the policies of insurance was due at that time; that subsequent to that time answers were filed in the garnishment suits in the Municipal Court of Chicago, Illinois, in which the insurance companies set up the amounts due by virtue of these policies to W. D. Sanders.

6.

That under the laws of Illinois, the homestead exemption of W. D. Sanders would not be a good defense in the garnishment suits.

7.

It is hereby agreed and stipulated between the parties hereto that upon the trial of the above causes defendant Armour Fertilizer Works may offer in evidence the testimony of A. F. Rackerby given upon the previous trial of these causes as said testimony is contained in the printed record in the Circuit Court of Appeals, pages 89 to 95, inclusive, without the necessity of having said witness present again in court.

It is further agreed and stipulated that the defendant Armour Fertilizer Works may offer in evidence the sections of the Illinois Statutes as contained in said printed record, pages 95 to 114,

inclusive, without the necessity of offering exemplified copies of such statutes.

It is further agreed and stipulated that the defendant Armour Fertilizer Works may offer in evidence the proceedings had in the Municipal Court of Chicago in the case of Armour Fertilizer Works vs. W. D. Sanders, No. 1413423, as contained in said printed record, pages 116 to 165, inclusive; and also in connection therewith the part of the certificate of the clerk of said court which was omitted from said printed record but which was included in the supplemental record, all without the necessity of offering an exemplified copy of said proceedings; in this connection it is agreed and stipulated that said printed record, together with said additional certificate, is a true and correct copy of said proceedings, and was exemplified and authenticated as provided in Section 687, Title 28, U. S. C. A.; that said printed copy with said additional certificate, may be considered as an exemplified and authenticated record of said proceedings as provided in said Section 687.

Witness our hands this 14th day of September, A. D. 1931.

(Signed) CANTEY, HANGER & MCMAHON,
*Attorneys for Armour Fertilizer Works.*

WILL C. THOMPSON,
*Attorney for Plaintiffs.*

WINFREY & LANE,
RODGERS & ROGERS,
*Attorneys for Mr. and Mrs. Sanders.*

It is further agreed that a reasonable attorney's fee for the filing and prosecution of the bill of interpleader in this cause by the plaintiffs is the sum of six hundred dollars ($600.00), and

that the cost and expense sustained and paid out by the plaintiffs in filing and prosecution of this interpleader suit is the sum of three hundred fifty-three and 75/100 dollars ($353.75), one-half of which was paid by each plaintiff. Armour Fertilizer Works stated that this agreement was made subject to its exceptions to the entry of the court's order sustaining the bill of interpleader.

Mr. Scarborough: We offer in evidence the record of the proceedings in the case of Armour Fertilizer Works vs. W. D. Sanders, No. 1413423 in the Municipal Court of Chicago, Cook County, Illinois, as contained in the printed record of the former appeal of this case, which it has been agreed may be considered as a certified or exemplified copy of such proceedings.

The United States of America.

In the Municipal Court of Chicago.

*State of Illinois, County of Cook, City of Chicago, ss,*

Pleas, proceedings and judgments, before the Municipal Court of Chicago, held in the City of Chicago, in the County of Cook and State of Illinois, at the places in the First District in said city provided by the corporate authorities of said city for the holding of said court, in the year of our Lord, one thousand nine hundred and twenty-seven and of the Independence of the United States, the one hundred and fifty-second.

Present: Honorable Albert B. George one of the judges of the Municipal Court of Chicago, Robert E. Crowe, States Attorney, Bernard W. Snow, Bailiff.

Attest:

James A. Kearns, Clerk.

Be it remembered, to-wit: that on the 2nd day of August, A. D. 1927, the following among other proceedings were held in said court and entered of record therein, to-wit:

*Armour Fertilizer Works, a Corporation, trading as Planters Fertilizer & Chemical Co. vs. W. W. Sanders No.* 1413423.

FIRST CLASS CONTRACT—CONFESSION.

Be it remembered that to-wit, on the 18th day of July, A. D. 1927, a certain statement of claim was filed in the office of the clerk of The Municipal Court, in words and figures following, to-wit:

No. .....

State of Texas

$1028.86

DeKalb Texas May 1st 1926.

On or before the 10th day of Sept. 1926 without grace the undersigned jointly and severally promise to pay to the order of Planters Fertilizer & Chemical Co., New Orleans, La. (owned and operated by Armour Fertilizer Works)

One Thousand Twenty-eight and 86/100 Dollars at .....

For value received in accordance with a contract between the payee and maker of this note.

It is further expressly agreed that the undersigned will pay interest on said sum at the rate of eight per cent (8%) per annum from maturity until maturity, and at the rate of ten per cent (10%) per annum from maturity until paid, and at the option of payee or holder hereof, this note shall be payable and the undersigned jointly and severally promise to pay this obligation at Stock Yards National Bank, Fort Worth, in Tarrant County, Texas; and that if this note is not paid at maturity, or if placed in

hands of an attorney for collection, or if suit is brought hereon, or if collected through the probate or bankruptcy court, the undersigned agree to pay all costs and expenses of collection hereof, and ten per cent on principal and interest as and for attorney's fees. Each of the makers, endorsers, guarantors or sureties hereon, hereby severally waives and renounces for himself and family any and all exemption rights he may have under or by virtue of the constitution or laws of this state or any other state of the United States as against this note or any extension or renewal thereof; and also waive demand, protest and notice of non-payment thereof and consent that the holder may grant any extension that he deems proper.

(Signed) W. D. Sanders.

No. 4906.

State of Texas
$1029.87

DeKalb Texas May 1st 1926.

On or before the 15th day of Sept. 1926 the undersigned jointly and severally promise to pay to the order of Planters Fertilizer & Chemical Co., New Orleans, La. (owned and operated by Armour Fertilizer Works)

One Thousand Twenty-nine and 97/100 Dollars at .....

For value received, in accordance with a contract between the payee and maker of this note.

It is further expressly agreed that the undersigned will pay interest on said sum at the rate of eight per cent (8%) per annum from maturity until maturity, and at the rate of ten per cent (10%) per annum, from maturity until paid, and at the option of payee or holder hereof, this note shall be payable and the undersigned jointly and severally promise to pay this obligation at Stock Yards Na-

tional Bank, Fort Worth, in Tarrant County, Texas; and that if this note is not paid at maturity, or if placed in hands of an attorney for collection, or if suit is brought hereon, or if collected through the probate or bankruptcy court, the undersigned agree to pay all costs and expenses of collection hereof and ten per cent on principal and interest as and for attorney's fees. Each of the makers endorsers, guarantors or sureties hereon, hereby severally waives and renounces for himself and family any and all exemption rights he may have under or by virtue of the constitution or laws of this state or any other state of the United States as against this note or any extension or renewal thereof, and also waive demand, protest and notice of non-payment thereof and consent that the holder may grant any extension that he deems proper.

(Signed) W. D. Sanders.

No. 4907.

State of Texas

$2062.20 De Kalb Texas May 1st 1926

On or before the 20th day of Sept., 1926, the undersigned jointly and severally promise to pay to the order of Planters Fertilizer & Chemical Co., New Orleans, La. (owned and operated by Armour Fertilizer Works)

One Thousand Sixty-two and 20/100 Dollars at .....

For value received in accordance with a contract between the payee and maker of this note.

It is further expressly agreed that the undersigned will pay interest on said sum at the rate of Eight per cent (8%) per annum from maturity until maturity, and at the rate of Ten per cent (10%) per annum from maturity until paid, and at the option of payee or holder hereof, this note shall be payable and the undersigned jointly and severally

promise to pay this obligation at Stock Yards National Bank, Fort Worth, in Tarrant County, Texas; and that if this note is not paid at maturity, or if placed in hands of an attorney for collection, or if suit is brought hereon, or if collected through the probate or bankruptcy court, the undersigned agree to pay all costs and expenses of collection hereof, and ten per cent on principal and interest as and for attorney's fees. Each of the makers, endorsers, guarantors or sureties hereon, hereby severally waives and renounces for himself and family any and all exemption rights he may have under or by virtue of the Constitution or laws of this State or any other State of the United States as against this note or any extension or renewal thereof, and also waive demand, protest and notice of non-payment thereof and consent that the holder may grant any extension that he deems proper.

(Signed) W. D. Sanders.

No. 4908.

State of Texas

$2064.43 DeKalb Texas May 1st 1926

On or before the 25th day of Sept. 1926, the undersigned jointly and severally promise to pay to the order of Planters Fertilizer & Chemical Co., New Orleans, La. (owned and operated by Armour Fertilizer Works)

Two Thousand Sixty Four and 43/100 Dollars at .....

For value received, in accordance with a contract between the payee and maker of this note.

It is further expressly agreed that the undersigned will pay interest on said sum at the rate of Eight per cent (8%) per annum from maturity until maturity; and at the rate of Ten per cent (10%) per annum, from maturity until paid, and at the option of payee or holder hereof, this note

shall be payable and the undersigned jointly and severally promise to pay this obligation at Stock Yards National Bank, Fort Worth, in Tarrant County, Texas; and that if this note is not paid at maturity, or if placed in hands of an attorney for collection, or if suit is brought hereon, or if collected through the probate or bankruptcy court, the undersigned agree to pay all costs and expenses of collection hereof and ten per cent on principal and interest as and for attorney's fees. Each of the makers, endorsers, guarantors or sureties hereon, hereby severally waives and renounces for himself and family any and all exemption rights he may have under or by virtue of the Constitution or laws of this State or any other State of the United States as against this note or any extension or renewal thereof, and also waive demand, protest and notice of non-payment thereof and consent that the holder may grant any extension that he deems proper.

(Signed) W. D. Sanders.

No. 4909.

State of Texas

$2066.65 De Kalb Texas May 1st 1929

On or before the 1st day of October, 1926, the undersigned jointly and severally promise to pay to the order of Planters Fertilizer & Chemical Co., New Orleans, La. (owned and operated by Armour Fertilizer Works)

Two Thousand Sixty-six and 65/100 Dollars at

For value received in accordance with a contract between the payee and maker of this note.

It is further expressly agreed that the undersigned will pay interest on said sum at the rate of Eight per cent (8%) per annum from maturity until maturity, and at the rate of Ten per cent (10%)

per annum from maturity until paid, and at the option of payee or holder hereof, this note shall be payable and the undersigned jointly and severally promise to pay this obligation at Stock Yards National Bank, Fort Worth, in Tarrant County, Texas; and that if this note is not paid at maturity, or if placed in hands of an attorney for collection, or if suit is brought hereon, or if collected through the probate or bankruptcy court, the undersigned agree to pay all costs and expenses of collection hereof, and ten per cent on principal and interest as and for attorney's fees. Each of the makers, endorsers, guarantors or sureties hereon, hereby severally waives and renounces for himself and family any and all exemption rights he may have under or by virtue of the Constitution or laws of this State or any other State of the United States as against this note or any extension or renewal thereof, and also waive demand, protest and notice of non-payment thereof and consent that the holder may grant any extension that he deems proper.

(Signed) W. D. Sanders.

No. 4910.

State of Texas

$2588.85 DeKalb Texas May 1st 1926

On or before the 10th day of October 1926, the undersigned jointly and severally promise to pay to the order of Planters Fertilizer & Chemical Co., New Orleans, La. (owned and operated by Armour Fertilizer Works)

Twenty-five Hundred Eighty-Eight and 85/100 Dollars at .....

For value received, in accordance with a contract between the payee and maker of this note.

It is further expressly agreed that the undersigned will pay interest on said sum at the rate of Eight per cent (8%) per annum from maturity un-

til maturity, and at the rate of Ten per cent (10%) per annum, from maturity until paid, and at the option of payee or holder hereof, this note shall be payable and the undersigned jointly and severally promise to pay this obligation at Stock Yards National Bank, Fort Worth, in Tarrant County, Texas; and that if this note is not paid at maturity, or if placed in hands of an attorney for collection, or if suit is brought hereon, or if collected through the probate or bankruptcy court, the undersigned agree to pay all costs and expenses of collection hereof and ten per cent on principal and interest as and for attorney's fees. Each of the makers, endorsers, guarantors or sureties hereon, hereby severally waives and renounces for himself and family any and all exemption rights he may have under or by virtue of the Constitution or laws of this State or any other State of the United States as against this note or any extension or renewal thereof, and also waive demand, protest and notice of non-payment thereof and consent that the holder may grant any extension that he deems proper.

(Signed) W. D. Sanders

No. 4911

State of Texas.

$2594.41 DeKalb Texas May 1st, 1926

On or before the 20th day of October, 1926 the undersigned jointly and severally promise to pay to the order of Planters Fertilizer & Chemical Co., New Orleans, La. (owned and operated by Armour Fertilizer Works)

Twenty-five Hundred Ninety-four and 41/100 Dollars at .....

For Value received in accordance with a contract between the payee and maker of this note.

It is further expressly agreed that the undersigned will pay interest on said sum at the rate of Eight per cent (8%) per annum from maturity until maturity, and at the rate of Ten per cent (10%) per annum from maturity until paid, and at the option of payee or holder hereof, this note shall be payable, and the undersigned jointly and severally promise to pay this obligation at Stock Yards National Bank, Fort Worth, in Tarrant County, Texas; and that if this note is not paid at maturity, or if placed in hands of an attorney for collection, or if suit is brought hereon, or if collected through the probate or bankruptcy court, the undersigned agree to pay all costs and expenses of collection hereof, and ten per cent on principal and interest as and for attorney's fees. Each of the makers, endorsers, guarantors or sureties hereon, hereby severally waives and renounces for himself and family any and all exemption rights he may have under or by virtue of the Constitution or laws of this State or any other State of the United States as against this note or any extension or renewal thereof, and also waive demand, protest and notice of non-payment thereof and consent that the holder may grant any extension that he deems proper.

(Signed) W. D. Sanders.

No. 4912.

State of Texas.

$3366.11 DeKalb Texas May 1st 1926.

On or before the 1st day of November 1926 the undersigned jointly and severally promise to pay to the order of Planters Fertilizer & Chemical

Co., New Orleans, La. (owned and operated by Armour Fertilizer Works)

Thirty-three Hundred Sixty-six and 11/100 Dollars at .....

For Value received in accordance with a contract between the payee and maker of this note.

It is further expressly agreed that the undersigned will pay interest on said sum at the rate of Eight per cent (8%) per annum from maturity until maturity, and at the rate of ten per cent (10%) per annum from maturity until paid and at the option of payee or holder hereof, this note shall be payable and the undersigned jointly and severally promise to pay this obligation at Stock Yards National Bank, Fort Worth, in Tarrant County, Texas; and that if this note is not paid at maturity, or if placed in hands of an attorney for collection, or if suit is brought hereon, or if collected through the probate or bankruptcy court, the undersigned agree to pay all costs and expenses of collection hereof, and ten per cent on principal and interest as and for attorney's fees. Each of the makers, endorsers, guarantors or sureties hereon, hereby severally waives and renounces for himself and family any and all exemption rights he may have under or by virtue of the Constitution or laws of this State or any other State of the United States as against this note or any extension or renewal thereof, and also waive demand, protest and notice of non-payment thereof and consent that the holder may grant any extension that he deems proper.

(Signed) W. D. Sanders.

Please make Settlement Promptly.

New Orleans, La. July 13th, 1927

W. D. Sanders,
DeKalb, Texas:

In account with

Planters Fertilizer & Chemical Company
(owned and operated by Armour Fertilizer Works)

New Orleans, La.

Date of Invoice Tons Ammoniates Tons Potash Tons And Tons Kainil? Tons Mis'l. Memo Amt Invoice Total.

| | |
|---|---|
| Note #4905 dated 5-1-26 due 9-10-26 | 1028.86 |
| Int. at 10% from 9-10-26 to 7-13-27 | 86.60 |
| Note #4906 dated 5-1-26 due 9-15-26 | 1029.97 |
| Int. at 10% from 9-15-26 to 7-13-27 | 85.26 |
| Note #4907 dated 5-1-26 due 9-20-26 | 2062.20 |
| Int. at 10% from 9-20-26 to 7-13-27 | 167.84 |
| Note #4908 dated 5-1-26 due 9-25-26 | 2064.43 |
| Int. at 10% from 9-25-26 to 7-13-27 | 165.15 |
| Note 4909 dated 5-1-26 due 10-1-26 | 2066.65 |
| Int. at 10% from 10-1-26 to 7-13-27 | 161.89 |
| Note #4910 dated 5-1-26 due 10-10-26 | 2588.85 |
| Int. at 10% from 10-10-26 to 7-13-27 | 196.32 |
| Note #4911 dated 5-1-26 due 10-20-26 | 2594.41 |
| Int. at 10% from 10-20-26 to 7-15-27 | 189.53 |
| Note #4912 dated 5-1-26 due 11-1-26 | 3366.11 |
| Int. at 10% from 11-1-26 to 7-13-27 | 235.64 |
| | 18089.71 |

Credits:

| 1926 | Interest Allowed | Cash |
|---|---|---|
| Oct. 13 | 112.50 | 1500.00 |
| " 22 | 108.75 | 1500.00 |
| " 26 | 107.08 | 1500.00 |

| | | | |
|---|---|---|---|
| Nov. 11 | 67.22 | 1000.00 | |
| " 29 | 62.31 | 1000.00 | |
| Dec. 4 | 60.83 | 1000.00 | |
| " 9 | 59.53 | 1000.00 | |
| " 13 | 58.33 | 1000.00 | |
| " 31 | 53.33 | 1000.00 | |
| | 689.88 | 10500.00 | |
| | | | 11189.88 |
| | | Balance due | 6899.83 |
| Bal. Principal | | 6301.48 | |
| Bal. Interest | | 598.35 | |
| | | 6899.83 | |
| 10% atty's fees | | 689.98 | |
| | | 7589.81 | |

"EXHIBIT A."

Returnable at Branch No. 15.

Room No. 1116.

The Municipal Court of Chicago.

FIRST CLASS—STATEMENT AND AFFIDAVIT OF PLAINTIFF'S CLAIM.

*State of Illinois, City of Chicago, First District, ss.*

*In the Municipal Court of Chicago. Armour Fertilizer Works, a corporation, trading as Planters Fertilizer & Chemical Co. vs. W. D. Sanders. No.* 1413423.

FIRST CLASS CLAIM FOR $8000.00.

Statement of Claim.

Plaintiff's claim is for Seven Thousand Five Hundred Eighty-nine Dollars and Eighty-one cents

($7589.81), the balance of principal and interest due on the attached eight promissory notes Nos. 4905, 4906, 4907, 4908, 4909, 4910, 4911 and 4912, plus 10% attorney's fees, as per attached statement "Exhibit A."

A. F. Rackerby,
*Attorney for Plaintiff.*
208 S. LaSalle St.
Yard 4100

*State of Illinois, County of Cook, City of Chicago, ss.*

Affidavit of Plaintiff's Claim.

A. F. Rackerby, being first duly sworn, on oath states that he is the agent *plaintiff* in above entitled cause; that he has knowledge of the facts that said cause is a suit for the recovery of money only; that the nature of plaintiff's demand is for the balance of principal and interest due on eight promissory notes, plus 10% attorney's fees, as per attached "Exhibit A," and that there is due to plaintiff from the defendant after allowing to defendant all just credits, deductions and set-offs the sum of Seven Thousand Five Hundred Eighty-nine dollars and eighty-one cents ($7589.81).

A. F. Rackerby.

Subscribed and sworn to before me this 18th day of July, 1927.

(Seal) James A. Kearns, Clerk.

Endorsed: The Municipal Court, First District, Statement of Claim and Affidavit of Claim, Armour Fertilizer Works, a corporation vs. W. D. Sanders. Filed 1927, July 18, P. M. 12:11. The Municipal Court of Chicago, .....Clerk, A. F. Rackerby, Attorney for Plaintiff, Yard 4100.

Be It Remembered that to-wit: on the 18th day of July, A. D. 1927, a certain affidavit for attachment was filed in the office of the Clerk of The Municipal Court, in words and figures following, to-wit:

The Municipal Court of Chicago.

*State of Illinois, City of Chicago, First District, ss:*

AFFIDAVIT FOR ATTACHMENT.

J. L. Quirk, being duly sworn, deposes and says that he is Credit Manager for Armour Fertilizer Works and that W. D. Sanders, DeKalb, Texas, is justly indebted to Armour Fertilizer Works, trading as Planters Fertilizer & Chemical Co., after allowing all just credits and set-offs, in the sum of Seven Thousand Five Hundred Eighty-nine ($7589.81) Dollars and eighty-one cents upon promissory notes and that the nature of plaintiff's said claim is

| | |
|---|---|
| principal due | $6301.48 |
| interest to 7-13-27 | 598.35 |
| 10% attorney's fees | 689.98 |
| | 7589.81 |

and affiant further states that the said W. D. Sanders is not a resident of this State, and that his place of residence is DeKalb Texas:

J. L. Quirk.

Subscribed and sworn to before me this 14th day of July, A. D. 1927.

W. A. Callen,

(Seal) Notary Public Clerk.

My Commission expires Nov. 10, 1927.

Endorsed: Attachment No. 1413423. The Municipal Court First District. Armour Fertilizer Works vs. W. D. Sanders. Affidavit for Attach-

ment. A. F. Rackerby, 208 S. LaSalle St., Chicago, Ill. Yards 4100.

Be it remembered, that to-wit: on the 18th day of July, A. D. 1927, a certain attachment bond was filed in the office of the clerk of the municipal court, in words and figures following, to-wit:

ATTACHMENT BOND.

Know All Men by These Presents: That we, Armour Fertilizer Works, a corporation, as principal, and National Surety Company, a corporation, as surety, are held and firmly bound unto W. D. Sanders, DeKalb, Texas, in the penal sum of Sixteen Thousand ($16,000) Dollars, and no cents, lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of July, A. D. 1927.

The condition of this obligation is such that whereas, the above bounden Armour Fertilizer Works, has on the day of the date hereof, prayed an attachment out of The Municipal Court of Chicago, at the suit of Armour Fertilizer Works against the estate of the above named W. D. Sanders for the sum of Seven Thousand, Five Hundred Eighty-nine ($7589.81) Dollars and eighty-one cents, and the same being about to be sued out of said court, returnable on the 25th day of July, A. D. 1927.

Now if said Armour Fertilizer Works shall prosecute its said suit with effect, or, in case of failure therein, shall well and truly pay and satisfy said W. D. Sanders all such costs in said suit and such damages as shall be awarded against said Armour Fertilizer Works, its successors and

assigns, in any suit or suits which may hereafter be brought for wrongfully suing out said attachment, then the above obligation to be void; otherwise to remain in full force and effect.

Armour Fertilizer Works,
By T. N. Stewart, Vice-President, (Seal)
National Surety Company (Seal)
By Robert E. Still, Resident Vice-President.
Attest:
Albert L. Stears, Resident Asst. Secty.

J. L. Quirk.
Approved 7-18-27,
James A. Kearns, Clerk.

Endorsed: Attachment No. 1413423 The Municipal Court Armour Fertilizer Works vs. W. D. Sanders Attachment Bond. A. F. Rackerby 208 S. LaSalle St. Chicago, Ill. Yards 4100.

Be it remembered, that afterwards on the same day to-wit: the 18th day of July, A. D. 1927, a certain writ of attachment was issued out of the office of the clerk of said municipal court, under the seal thereof, directed to the bailiff of said court, to execute, which writ, together with the return of the bailiff thereon endorsed, were and are in words and figures following, to-wit:

The Municipal Court of Chicago.

*State of Illinois, City of Chicago, First District, ss.*

*The People of the State of Illinois, to The Bailiff of The Municipal Court of Chicago, Greeting:*

First Class Attachment Writ, First District.

Whereas, Armour Fertilizer Works hath complained that W. D. Sanders, DeKalb, Texas, is justly

indebted to the said Armour Fertilizer Works, trading as Planters Fertilizer & Chemical Co., to the amount of Seven Thousand Five Hundred Eighty-nine Dollars and eighty-one cents ($7,589.81), and that the said W. D. Sanders is not a resident of this state, so that ordinary process of law cannot be served upon him and that his place of residence is DeKalb, Texas, and the said Armour Fertilizer Works having given bond and security according to law.

We therefore command you, that you attach so much of the estate, real or personal, of the said W. D. Sanders to be found in the First District of your city, as shall be of value sufficient to satisfy the said debt and cost, according to the said complaint; and such estate, so attached in your hands, to secure or to so provide that the same may be liable to further proceedings thereupon according to law; and that you summon W. D. Sanders if he shall be found in the First District of the City of Chicago, personally to be and appear before The Municipal Court of Chicago, at the City Hall in the City of Chicago, on Monday on the 25th day of July, 1927, to answer unto the complaint of Armour Fertilizer Works, trading as Planters Fertilizer & Chemical Co., and that you also summon Hartford Fire Insurance Co., 410 N. Michigan Ave. National Fire Insurance Co., 175 W. Jackson Blvd. and such other persons, as you shall be required by the said Armour Fertilizer Works, as garnishee, to be and appear before the said court on Monday the said 25th day of July, 1927, at 9:30 A. M., then and there to answer to what may be objected against them.

When and where you shall make known to the said court how you shall have executed this writ, and have you then and there this writ.

Witness: James A. Kearns, clerk of the said court, and the seal thereof, at Chicago, aforesaid, this . day of July, A. D. 1927.

(Seal) James A. Kearns, Clerk.

Endorsed: No property of the within named defendant found in the City of Chicago on which to levy this writ, and by order of plaintiffs' attorney I have served this writ on the within named Hartford Fire Ins. Co., a corporation, as garnishee by delivering a copy thereof together with a copy of written interrogatories filed in said suit to F. Stephens, agent of said corporation and at the same time informing him of the contents thereof in the City of Chicago this 19 day of July, 11:40 A. M. 1927, and paid $1.10 fees and mileage. President, Secretary, Superintendent, General Agent or other officer of said corporation not found in the City of Chicago, and on due inquiry I am unable to find the within named defendant. I therefore return the within named defendant not found in the City of Chicago.

Bernard W. Snow, Bailiff.
By J. DuBach, Deputy.

No property of the within named defendant found in the City of Chicago on which to levy this writ and

By order of plaintiff's attorney I have served this writ on the within named National Fire Ins. Co., a corporation, as garnishee by delivering a copy thereof together with a copy of written interrogatories filed in said suit to I. Bucher, agent, of said corporation and at the same time informing him of the contents thereof in the City of Chicago this 19th day of July, 12:30 P. M. 1927, and paid $1.10 fees and mileage. The President, Secretary,

Superintendent, General Agent or other officer of said corporation.

Bernard W. Snow, Bailiff,
By A. Berry, Deputy.

Be it remembered, that to-wit: On the 18th day of July, A. D. 1927, a certain interrogatories to garnishee, was filed in the office of the Clerk of The Municipal Court, in words and figures following, to-wit:

The Municipal Court of Chicago.

*State of Illinois, City of Chicago, First District, ss.*

*In the Municipal Court of Chicago, W. D. Sanders for the use of Armour Fertilizer Works, vs. Hartford Fire Insurance Co., and the National Fire Insurance Co., Garnishees. No.* 1413423.

INTERROGATORIES TO GARNISHEE.

Interrogatories to be answered by said Hartford Fire Insurance Co. and the National Fire Insurance Co., summoned as garnishee in this case:

1st. Were you, at the time of the service upon you of the writ issued in this cause or since that time, indebted to said W. D. Sanders of DeKalb, Texas? If so, state the amount thereof, when the same is due and payable, and the nature of such indebtedness.

2nd. Had you in your possession, charge or control, at the date of the service of the writ issued in this case or since that time, any moneys, choses in action, credits or effects owned by or due to said W. D. Sanders. If so, state what choses in action, moneys and credits, the amount thereof, by whom owing, and when payable, and what effects, and the value thereof.

3rd. Had you in your possession, charge or custody, at the date of the service of said writ on you, any lands, tenements, goods or chattels of said W. D. Sanders. If so, give the description of each, the value thereof, and state by what title held.

4th. Had you, at the date of service of said writ on you, any rights, credits or effects of said W. D. Sanders (not herein specified) in your possession, charge or custody, from you and owing, at the time of service of said writ on you, or any time since, or which hereafter may become due? If so, state the value, amount when due, and how payable.

5th. Have you any property, goods, chattels, rights, credits or effects of any kind belonging to said W. D. Sanders, or in which interested? If so, describe the same fully and particularly, giving amounts, items and value thereof.

A. F. RACKERBY,
*Plaintiff's Attorney.*
Yards 4100

Endorsed: In the Municipal Court, First District, Armour Fertilizer Works, Garnishee for the use of W. D. Sanders, vs. Hartford Fire Insurance Co. National Fire Insurance Co., Interrogatories to Garnishee A. F. Rackerby, 208 S. La Salle St., Chicago, Ill., Yards 4100.

Be it remembered, that to-wit: On the 25th day of July, A. D. 1927, a certain

Answer of Hartford Fire Insurance Co., garnishee, was filed in the office of the Clerk of The Municipal Court, in words and figures following, to-wit:

*State of Illinois, City of Chicago, First District, ss.*

*In the Municipal Court of Chicago. W. D. Sanders, for the use of Armour Fertilizer Works, vs. Hartford Fire Insurance Company and National Fire Insurance Company, Garnishees.* **1413423.**

ANSWER OF HARTFORD FIRE INSURANCE COMPANY GARNISHEE.

*State of Illinois, County of Cook, ss.*

C. H. Smith, being first duly sworn, upon his oath deposes and says that he is the assistant general agent of the Hartford Fire Insurance Company and has access to the records of the Hartford Fire Insurance Company pertaining to losses reported to the said Hartford Fire Insurance Company under policies of insurance issued by said company, and has under his charge the records of said company showing the indebtedness of said company to said company's insureds and others.

Affiant further states that previous to the service of garnishment summons on the said Hartford Fire Insurance Company, garnishee in this action, the said Hartford Fire Insurance Company, garnishee, had issued to W. D. Sanders through said company's southern department office two (2) policies of insurance, Nos. 635 and 640, insuring said W. D. Sanders against loss by fire on certain property in the sum of five thousand and no/100 ($5,000.00) dollars; that thereafter and previous to any loss by fire being reported by the said W. D. Sanders under said policies of insurance and previous to service of said garnishment summons on the said Hartford Fire Insurance Company, garnishee in this ac-

tion, the said Hartford Fire Insurance Company, garnishee, cancelled said policies of insurance, rendering said policies of insurance of no further force and effect; that subsequent to the cancellation of said policies of insurance as aforesaid a loss by fire was reported by the said W. D. Sanders as having occurred to the property insured under said policies of insurance and claim made by the said W. D. Sanders against the said Hartford Fire Insurance Company for damage suffered by him on account of said fire; that the said Hartford Fire Insurance Company, garnishee, is not liable to the said W. D. Sanders under said policies of insurance or otherwise and is not indebted to the said W. D. Sanders in any amount.

Affiant makes answer to the interrogatories served upon the said Hartford Fire Insurance Company, garnishee in this action, as follows:

1. The said Hartford Fire Insurance Company, garnishee, was not at the time of the service upon it of the writ issued in this cause or since that time indebted to the said W. D. Sanders of DeKalb, Texas, in any amount.

2. The Hartford Fire Insurance Company, garnishee, did not have in its possession, charge or control at the date of the service of the writ issued in this case or since that time any moneys, choses in action, credits or effects owned by or due to said W. D. Sanders.

3. The Hartford Fire Insurance Company, garnishee, did not have in its possession, charge or custody at the date of the service of said writ any lands, tenements, goods or chattels of the said W. D. Sanders.

4. The Hartford Fire Insurance Company, garnishee, did not at the date of service of said writ have in its possession any rights, credits or effects of said W. D. Sanders from it owing at the time of the service of said writ or any time since, and did not have in its possession any rights, credits or effects of said W. D. Sanders which may hereafter become due unless it may be hereafter adjudged in an action instituted by the said W. D. Sanders against said Hartford Fire Insurance Company, garnishee, that the said Hartford Fire Insurance Company, garnishee, is liable to the said W. D. Sanders under the said two policies of insurance hereinbefore mentioned.

5. The Hartford Fire Insurance Company, garnishee, does not have any property, goods, chattels, rights, credits or effects of any kind belonging to the said W. D. Sanders or in which he is interested other than as hereinbefore mentioned.

Further affiant deposeth not.

(Signed) C. [illegible] Smith,
Assistant General Agent.

Subscribed and sworn to before me this 25th day of July, 1927.

(Seal) (Signed) Dorothy Hoffmann.

My commission expires September 16th, 1930.

Be it remembered, that afterwards, to-wit: on the 2nd day of August, A. D. 1927, the following among other proceedings were had and entered of record in said Municipal Court, which proceedings were and are in words and figures following, to-wit:

Present Honorable Albert B. George one of the judges of the Municipal Court of Chicago.

ROBERT E. CROWE,
*States Attorney,*

BERNARD W. SNOW, Bailiff,
JAMES A. KEARNS, Clerk.

*Armour Fertilizer Works, a Corporation, trading as Planters Fertilizer & Chemical Co., vs. W. D. Sanders, No.* 1413423.

FIRST CLASS ATTACHMENT.

It is ordered by the court that this cause be, and the same is hereby postponed for hearing to September 19, 1927, 9:30 A. M. Publication.

Be it remembered, that to-wit: on the 12th day of August, A. D. 1927, a certain

CERTIFICATE OF MAILING

was filed in the office of the clerk of the municipal court, in words and figures following, to-wit:

*State of Illinois, City of Chicago, First District, ss.*

*In the Municipal Court of Chicago. Armour Fertilizer Works vs. W. D. Sanders. No.* 1413423.

ATTACHMENT FIRST CLASS.

Public notice is hereby given to the said W. D. Sanders that a writ of attachment has been issued by the Municipal Court of Chicago, dated the Eighteenth day of July, A. D. 1927, at the suit of the above named plaintiff, Armour Fertilizer Works, and against the estate of said defendant, W. D. Sanders, for the sum of seven thousand five hundred eighty-nine dollars and eighty-one cents, directed to the bailiff of the Municipal Court of

Chicago, which said writ was been returned executed.

Now, therefore, unless you, the said W. D. Sanders, shall personally be and appear before the said Municipal Court of Chicago, in Branch No. 15, Room 1116, at the City Hall in the City of Chicago, at 9:30 A. M. (daylight saving time) on Monday, the Nineteenth day of September, A. D. 1927, and defend said action, judgment will be entered against you by default, in favor of the said Armour Fertilizer Works, and so much of the property attached as may be sufficient to satisfy the said judgment and costs, will be sold to satisfy the same.

JAMES A. KEARNS, Clerk.

A. F. RACKERBY, *Attorney*, 208 S. LaSalle Street.

Aug-10-17-24-31

State of Illinois,
City of Chicago,
First District, ss.

I, James A. Kearns, Clerk of The Municipal Court of Chicago, in the State aforesaid, hereby certify, that on the 12th day of August, A. D. 1927, being within ten days after the first publication of the within notice, I sent, by mail, postage prepaid, a copy of said notice to W. D. Sanders, De Kalb, Texas, defendant, at ..... in pursuance of Section 22 of an Act of the General Assembly of the State of Illinois, entitled 'An Act in Regard to Attachments in Courts of Record,' in force July 1, 1872.

Witness my hand and the seal of said Court, this 12th day of August, A. D. 1927.

JAMES A. KEARNS,

(Seal) Clerk."

Be it remembered, that to-wit: on the 6th day of September, A. D. 1927, a certain Certificate of Publication was filed in the office of the clerk of the municipal court, in words and figures following, to-wit:

*State of Illinois,* )
*City of Chicago,* ) ss
*First District,* )
*In the Municipal Court of Chicago. Armour Fertilizer Works vs. W. D. Sanders. Attachment: First Class. No.* 1413423.

Public notice is hereby given to the said W. D. Sanders, that a Writ of Attachment has been issued by the Municipal Court of Chicago, dated the 18th day of July, A. D. 1927, at the suit of the above named plaintiff, Armour Fertilizer Works, and against the estate of said defendant, W. D. Sanders, for the sum of Seven Thousand Five Hundred Eighty-nine Dollars and Eighty-one cents, directed to the Bailiff of the Municipal Court of Chicago, which said writ has been returned executed.

Law Bulletin Publishing Co. a Corporation organized and existing under and by virtue of the laws of the State of Illinois, does hereby certify that it is the publisher of the Chicago Daily Law Bulletin; that said Chicago Daily Law Bulletin is a secular newspaper and has been published daily in the City of Chicago, County of Cook and State of Illinois, continuously for more than six months prior to, on and since the date of the first publication of the notice hereinafter referred to and is of general circulation throughout said County and State.

That a notice, of which the annexed printed slip is a true copy, was published four times in said Chicago Daily Law Bulletin, namely once in

Now, therefore, unless you, the said W. D. Sanders, shall personally be and appear before the said Municipal Court of Chicago, in Branch No. 15, Room 1116, at the City Hall in the City of Chicago, at 9:30 A. M. (daylight saving time) on Monday, the 19th day of September, A. D. 1927, and defend said action, judgment will be entered against you by default, in favor of the said Armour Fertilizer Works, and so much of the property attached as may be sufficient to satisfy the said judgment and costs, will be sold to satisfy the same.

JAMES A. KEARNS,
Clerk.

A. F. RACKERBY,
*Attorney*, 208 S. LaSalle Street.

Aug-10-17-24-31

each week for four successive weeks and that the first publication of said notice as aforesaid was made in said newspaper, dated and published on the 10th day of August, A. D. 1927, and the last publication thereof was made in said newspaper dated and published on the 31st day of August, A. D. 1927.

In witness whereof, the undersigned, the said Law Bulletin Publishing Co., has caused this certificate to be signed by Henry W. Ewing, its President, and attested and its corporate seal affixed hereto by H. J. McFarland, its Secretary, at Chicago, Illinois, this 31st day of August, A. D. 1927.

LAW BULLETIN
PUBLISHING CO.
By HENRY W. EWING,
President.

Attest:
H. J. MACFARLAND,
Secretary.

(Publication Fee, $14.00)

Be it remembered that afterwards, to-wit: on the 19th day of September, A. D. 1927, the following among other proceedings were had and entered of record in said municipal court, which proceedings were and are in words and figures following, to-wit:

Present Honorable Howard Hayes, one of the Judges of the Municipal Court of Chicago, Robert E. Crowe, state's attorney, Bernard W. Snow, bailiff, James A. Kearns, clerk.

*Armour Fertilizer Works, a Corporation, trading as Planters Fertilizer & Chemical Co. vs. W. D. Sanders, No.* 1413423.

FIRST CLASS ATTACHMENT.

On motion of the plaintiff herein, the defendant, W. D. Sanders, is ruled to appear herein instanter, and thereupon said defendant being called in open court comes not, nor does anyone for said defendant, but herein said defendant makes default, and it appearing to the court that said defendant was duly notified by publication of notice according to law duly notifying said defendant of the pendency of this suit and of the time required of said defendant to appear herein, all of which was a sufficient number of days prior to the time required of said defendant to appear as aforesaid to now require of said defendant that said defendant either appear in this cause at this time or that said defendant suffer judgment by default for want of such appearance, and it further appearing to the court that said defendant is still in default of an appearance herein, it is, on motion of the plaintiff, ordered by the court that default be entered herein against said defendant for want of an appearance.

And as to the damages sustained by the plaintiff herein, the court hears the evidence contained in the affidavit of plaintiff's claim filed herein and finds therefrom that there is due to the plaintiff the sum of money shown in said affidavit of claim to be due, and assesses the plaintiff's damages at the sum of seven thousand, five hundred eighty-nine and 81/100 dollars ($7,589.81).

This cause coming on for further proceedings herein, it is considered by the court that the attachment herein be and it hereby is sustained, that the plaintiff have judgment on the default and assessment of damages herein, and that the plaintiff have and recover of and from the defendant, W. D. Sanders, the damages of the plaintiff amounting to the sum of seven thousand, five hundred eighty-nine and 81/100 ($7,589.81) in form as aforesaid assessed, together with the costs by the plaintiff herein expended and that execution issue therefor.

Be it remembered, that to-wit: on the 31st day of December, A. D. 1927, a certain appearance was filed in the office of the clerk of the municipal court, in words and figures following, to-wit:

The Municipal Court of Chicago Appearance

*State of Illinois, City of Chicago, ss.*

*In the Municipal Court of Chicago. Armour Fertilizer Works vs. W. D. Sanders, National Fire Insurance Company, Garnishee. No.* 1413423.

CLASS FIRST.

We hereby enter the appearance of National Fire Insurance Company, garnishee, defendant, and ourselves as its attorneys in the above entitled cause.

HICKS & FOLONIE,
*Defendant's Attorneys.*

Be it remembered that afterwards, to-wit: on the 12th day of June, A. D. 1928, the following among other proceedings were had and entered of record in said municipal court, which proceedings were and are in words and figures following, to-wit:

Present: Honorable Herbert G. Immenhausen, one of the Judges of the Municipal Court of Chicago, Robert E. Crowe, state's attorney, Bernard W. Snow, bailiff, James A. Kearns, clerk.

*Armour Fertilizer Works, a Corporation, trading as Planters Fertilizer & Chemical Co. vs. W. D. Sanders. No.* 1413423.

FIRST CLASS CONTRACT-CONFESSION.

It is ordered by the court that the time for garnishees, Hartford Fire Insurance Co., a corporation, and National Fire Insurance Co., a corporation, to answer be and the same is hereby extended fifteen (15) days from today.

Be it remembered, that to-wit: on the 27th day of June, A. D. 1928, a certain answer of garnishee was filed in the office of the clerk of the municipal court, in words and figures following, to-wit:

*State of Illinois, County of Cook, City of Chicago, ss.*

*In the Municipal Court of Chicago. Armour Fertilizer Works vs. W. D. Sanders, National Fire Fire Insurance Company, Garnishee. No.* 1413423.

ANSWER OF GARNISHEE NATIONAL FIRE INSURANCE COMPANY.

Now comes the garnishee, the National Fire Insurance Company, a corporation, by Hicks and

Folonie, its attorneys, and answering the interrogatories heretofore served upon it, says:

*Answer to Interrogatory* 1:

This garnishee was not, at the time of the service upon it of the attachment writ heretofore issued in this cause, indebted in any manner to the defendant herein, W. D. Sanders of DeKalb, Texas. Since the service of the writ a certain indebtedness has arisen between this garnishee and W. D. Sanders, the nature, amount and circumstances surrounding the same, being more specifically set forth in the answer to interrogatory 5.

*Answer to Interrogatory* 2:

At the time of the service of the attachment writ in this cause on the garnishee, this garnishee had not in its possession, charge or control, any monies, choses in action, credits or effects owned by or due to the said W. D. Sanders, the defendant herein. Since the date of the service of the attachment writ in this cause, certain monies have become due from this garnishee to the defendant W. D. Sanders, the amount of which and the circumstances surrounding which are more fully set forth in the answer of this garnishee to interrogatory 5.

*Answer to Interrogatory* 3:

This garnishee did not have in its charge, custody or control at the date of the service of the attachment writ in this cause, any lands, tenements, goods or chattels of the said W. D. Sanders, defendant herein.

*Answer to Interrogatory* 4:

This garnishee, at the date of the service of the attachment writ on it, had no other rights, credits or effects of the said W. D. Sanders, defendant

herein, in its possession, charge or custody nor from it due and owing at the time of the service of the writ on it, or at any time since, or which may hereafter become due, except as is more fully set forth in the answer of this garnishee to the next interrogatory.

*Answer to Interrogatory 5:*

And, answering Interrogatory 5, this garnishee says that heretofore it issued a certain contract or policy of insurance which was policy No. 163867, to W. D. Sanders, of DeKalb, Texas; the policy covered in the sum of $2,000 upon a frame dwelling and covered $2,000 upon household furniture at the same location; said property being located on the West side of Johnson Street, Old DeKalb, Texas, on lots 1 and 2 in Block 3. Fire is reported to have occurred on July 3rd, 1927, causing damage to the property so insured by this garnishee in its said contract of insurance above referred to. Loss and damage under the said contract of insurance to the property so covered by its terms and conditions, has been ascertained, determined and fixed at the sum of $3400.00.

Further answering said Interrogatory 5, this garnishee says that it is provided by:

(a) The Constitution of Texas, Article 16, Section 49 through 51, as follows:

"*Sec.* 49: The Legislature shall have power and it shall be its duty, to protect by law from forced sale a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female.

"*Sec.* 50: The homestead of a family shall be, and is hereby, protected from forced sale, for the payment of all debts except for the purchase money thereof, or a part of such purchase money, the taxes

due thereon, or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in writing, with the consent of the wife given in the same manner as is required in making a sale and conveyance of the homestead without the consent of the wife, given in such manner as may be prescribed by law. No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money therefor, or improvements made thereon, as hereinbefore provided, whether such mortgage or trust deed, or other lien, shall have been created by the husband alone, or together with his wife; and all pretended sales of the homestead involving any condition of defeasance shall be void.

"*Sec.* 51: The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot or lots not to exceed in value Five thousand dollars, at the time of their designation as the homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of a family; provided, also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired."

And this garnishee furtner says that it is provided by the statutes of the State of Texas in full force and effect at all times before the issuance of the said policy of insurance by the garnishee to the said W. D. Sanders, and still is so provided by the statutes of the State of Texas, as follows:

Article 3832 of the Revised Statutes of 1925 of Texas:

"The following property shall be reserved to every family exempt from attachment or execution and every other species of forced sale for the payment of debts except as hereinafter provided:

1. The homestead of the family.

2. All household and kitchen furniture.

"*Article* 3833: The homestead of a family not in a city or town shall consist of not more than 200 acres which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village shall consist of a lot or lots not to exceed in value $5,000 at the time of the designation as a homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of a family. Any temporary renting of the homestead shall not change the character of the same when no other homestead has been acquired.

"*Article* 3834: The proceeds of the voluntary sale of the homestead shall not be subject to garnishment or forced sale within six months after such sale."

Further answering, this garnishee says that by the laws of the State of Texas aforesaid, as construed by the highest courts of Texas any insurance monies from insurance of homestead or of household and kitchen furniture, are exempt likewise and identically as are the said homestead and said household and kitchen furniture.

Further answering, this garnishee states that the defendant herein, W. D. Sanders, of DeKalb,

Texas, had a policy of insurance with this garnishee, National Fire Insurance Company, as aforesaid and the said insurance was exclusively upon the homestead in the sum of $2,000 and upon household and kitchen furniture in the sum of $2,000; that the said W. D. Sanders was at the time of the fire loss in question, which occurred on or about July 3rd, 1927, the head of a family consisting of himself, his wife and daughter, who occupied the said building as a homestead; and the property therein contained and insured therein was household and kitchen furniture and was by them used and employed in the said homestead; and this garnishee says that it is under no liability to the said defendant, W. D. Sanders, of DeKalb, Texas and owes the said defendant no money and has no goods, property or effects of any kind, nature or character owing to him, save and except only the proceeds of the said contract or policy of insurance so insuring him, the defendant, upon the homestead and household and kitchen furniture, as aforesaid.

Further answering, this garnishee says that by the Constitution of the United States, this court is bound to give full faith and credit to the laws of Texas; and that by the laws of Texas where the liability of this garnishee, under the said contract or policy of insurance by it issued to the defendant herein, W. D. Sanders, arose, the liability of this garnishee is a liability to deliver the proceeds of the insurance to the said defendant, W. D. Sanders of DeKalb, Texas, the person so insured, and by the terms of the laws of the said State of Texas, this garnishee is prohibited from delivering or paying the same to any other person or to any creditor.

Further answering, this garnishee says that by the laws of the State of Illinois, every house-

holder, having a family, is entitled to estate of homestead to the extent in value of $1,000 in the premises occupied by him or held as a residence, which is exempt from debts and the proceeds thereof are by law in Illinois exempt from execution or other process and the insurance money is by Section 7 of the statutes, specifically exempted.

Further answering this garnishee says that the building, which was the subject of insurance under the contract or policy made with the defendant, W. D. Sanders, and upon which contract liability is claimed and asserted, was a building exempted as a homestead and was insured in favor of the defendant, W. D. Sanders, who was entitled to the exemption, and that the said building had it not been destroyed, would have been exempted.

This garnishee further claims for the benefit of the defendant herein, any and all exemptions which this defendant may have by reason or by virtue of Section 13 of the Exemption laws of this State, Chapter 52, Illinois Revised Statutes, Callahan & Company, 1927.

This garnishee further states that by section 20 of the Exemption Act of Illinois it is made a criminal act to send claims out of the State of Illinois for suit, when the creditor, debtor or person owing for the earnings intended to be reached, are within the jurisdiction of the courts of the State of Illinois. The same is made a criminal offense, whereby the public policy of the State of Illinois is fixed and declared to prohibit the sending of claims by attachment to another state, when the principle debtor has his residence in this state and there remains subject to suit.

Garnishee further states that the said W. D. Sanders makes his home in the State of Texas and has during his whole life and long before

the arising of the supposed causes of action herein sued upon, and did not after the arising of rights of action sued upon by the plaintiff herein, or after the arising of liability of the garnishee herein, in any wise alter or change his residence or citizenship, but at all said times did and still does reside in and maintain his residence and domicile in the State of Texas, and that if he were sued in the State of Texas he would be entitled to claim exemption of all of the proceeds of the policy of insurance herein, as exempted to him by the laws of the State of Texas; and that by its suit herein, the plaintiff attempts and intends thereby to deprive the said defendant, W. D. Sanders, a *bona fide* resident of the State of Texas, of his rights under the statutes of the State of Texas on the subject of exemption of property, on levy and sale, on execution or of attachment and garnishment.

Wherefore this garnishee respectfully requests this Honorable Court that it be discharged as garnishee herein.

NATIONAL FIRE INSURANCE COMPANY,
A CORPORATION, Garnishee,
By HICKS & FOLONIE,
*Its Attorneys.*

*State of Texas, County of Dallas, ss.*

Chas. D. Rankin, being first duly sworn, on oath states that he is the special agent of the Garnishee, National Fire Insurance Company, a corporation; that he has knowledge of the facts; that he has read the above and foregoing answer made by this garnishee to the several Interrogatories propounded to this garnishee by the plaintiff herein, and that the answers to the various Interrogatories are and each of them is true

in substance and in fact, which such answers above by reference thereto, are incorporated in this affidavit and made a part hereof as though fully set forth herein.

Affiant further states that the reason this affidavit is made by this affiant and not by the garnishee is that the said garnishee is a corporation and affiant therefore verifies the same for said garnishee.

Chas. D. Rankin.

Subscribed and sworn to before me, Margaret E. Fisher, a notary public, this 25th day of June, A. D. 1928.

Margaret E. Fisher,
Notary Public,
Dallas County, Texas.

Be it remembered, that to-wit: on the 27th day of June, A. D. 1928, a certain amended answer of garnishee was filed in the office of the clerk of the municipal court, in words and figures following, to-wit:

*State of Illinois, City of Chicago, First District, ss.*

*In the Municipal Court of Chicago. W. D. Sanders, for the use of Armour Fertilizer Works, v. Hartford Fire Insurance Company and National Fire Insurance Company, Garnishees. No.* 1413423.

AMENDED ANSWER OF THE HARTFORD FIRE INSURANCE COMPANY, GARNISHEE.

The Hartford Fire Insurance Company, Garnishee, for its amended answer herein answering, says:

That it is a corporation organized and existing under and by virtue of the laws of the State

of Connecticut, maintaining its home office at Hartford, Connecticut.

That previous to the service of garnishment summons upon it in this action, the said Hartford Fire Insurance Company, Garnishee, had issued to W. D. Sanders, a resident of the State of Texas, its policy No. 635, insuring the said W. D. Sanders against loss or damage by fire according to the term, provisions and conditions of said policy, in the sum of $3000.00, for a term of three years beginning on the 23rd day of February, 1925, and ending on the 23rd day of February, 1928, upon his two-story shingle roof, frame building, occupied by him as a dwelling, and situated on the west side of Johnson Street on Lots 1 and 2 in Block 3 in the town of DeKalb, Texas.

That previous to the service of garnishment summons upon it in this action, the said Hartford Fire Insurance Company, Garnishee, had issued to the said W. D. Sanders its policy No. 640, insuring the said W. D. Sanders against loss by fire in the sum of $2000.00, according to the terms, provisions and conditions of said policy for a term of three years beginning on the 1st day of September, 1925, and ending on the 1st day of September, 1928, upon the two-story shingle roof, frame building, as hereinbefore described and situated.

That on or about the 3rd day of July, 1927, a loss by fire was reported by the said W. D. Sanders as having occurred, damaging and destroying certain of the property described in the policies of insurance hereinbefore mentioned; that thereafter and subsequent to the 25th day of July, 1927, the Hartford Fire Insurance Company, Garnishee, agreed with the said W. D. Sanders that the liability of the said Hartford Fire Insurance Company to the said W. D. Sanders under its policy

No. 635 was the sum of $2550.00 and that the liability of said company to the said W. D. Sanders under its policy No. 640 was the sum of $1700.00 and that the total liability of the said Hartford Fire Insurance Company to the said W. D. Sanders under said policies of insurance should be and was the sum of $4250.00; that pursuant to the terms of said adjustment, the said Hartford Fire Insurance Company, Garnishee, is indebted to the said W. D. Sanders in said sum of $4250.00.

Further answering the Hartford Fire Insurance Company, Garnishee, says that it is and was during the times herein mentioned, provided by the following sections of Article 16 of the Constitution of the State of Texas, among other things in words and figures as follows, to-wit:

"Sec. 49. The legislature shall have power, and it shall be its duty, to protect by law from forced sale a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female.

"Sec. 50. The homestead of a family shall be, and is hereby, protected from forced sale, for the payment of all debts except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in writing, with the consent of the wife given in the same manner as is required in making a sale and conveyance of the homestead; nor shall the owner, if a married man, sell the homestead without the consent of the wife, given in such manner as may be prescribed by law. No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money therefor, or improvements made

thereon, as hereinbefore provided, whether such mortgage, or trust deed, or other lien, shall have been created by the husband alone, or together with his wife; and all pretended sales of the homestead involving any condition of defeasance shall be void.

"Sec. 51. The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot or lots, not to exceed in value five thousand dollars, at the time of their designation as the homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of a family; provided, also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired."

Further answering, the Hartford Fire Insurance Company, Garnishee, says that it is and was during the times herein mentioned provided by the following articles of Title 57 of Baldwin's Complete Texas Statutes, 1925, the same being the statutory law of the State of Texas, and being in words and figures, as follows, to-wit:

"Art. 3832. Property exempt to family.—The following property shall be reserved to every family, exempt from attachment or execution and every other species of forced sale for the payment of debts, except as hereinafter provided:

(1) The homestead of the family.

* * * * * * *

"Art. 3833. 'Homestead.'—The homestead of a family, not in a town or city, shall consist of not

more than two hundred acres, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village shall consist of a lot or lots, not to exceed in value five thousand dollars at the time of their designation as a homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of a family. Any temporary renting of the homestead shall not change the character of the same when no other homestead has been acquired."

"Art. 3834. Proceeds exempt.—The proceeds of the voluntary sale of the homestead shall not be subject to garnishment or forced sale within six months after such sale."

Further answering, the Hartford Fire Insurance Company, Garnishee, says that the said W. D. Sanders claims and contends that the property described and insured under said policies of insurance as aforesaid, and damaged and destroyed by said fire as aforesaid, consisted of his homestead, and the said Hartford Fire Insurance Company, Garnishee, further says that the said W. D. Sanders claims and contends that under the Constitution of the State of Texas, and under the statutory law of the State of Texas said property was and is, and the proceeds of the insurance on said property by reason of said fire loss was and is exempt from attachment and garnishment in this action.

The said Hartford Fire Insurance Company, Garnishee, further answering says that the said W. D. Sanders has notified it that whereas said proceeds of said fire loss on said property in the sum of $4250.00 is exempt from attachment and garnishment in this action, that he will, if judgment should be rendered against the said

Hartford Fire Insurance Company in favor of the Armour Fertilizer Works for said amount in this action, institute a suit against the said Hartford Fire Insurance Company in the courts in the State of Texas to recover said sum by reason of the liability of the said Hartford Fire Insurance Company to the said W. D. Sanders under said policies or contracts of insurance.

Further answering the said Hartford Fire Insurance Company states that it has filed its bill in equity in the District Court of the United States for the Eastern District of Texas, Texarkana Division, wherein the said W. D. Sanders and Armour Fertilizer Works are made parties defendant, and wherein the said Hartford Fire Insurance Company seeks an injunction against the said Armour Fertilizer Works restraining them from the further prosecution of this action, and an order requiring the said W. D. Sanders and the said Armour Fertilizer Works to set up their respective rights and claims in and to said sum of $4250.00, which the said Hartford Fire Insurance Company in said bill has tendered into the registry of said court; that process has been issued out of the District Court of the United States for the said Eastern District of Texas, Texarkana Division, in said action and has been served by the United States Marshal upon the said defendants in said action, the said W. D. Sanders and the said Armour Fertilizer Works, wherein and by said process said defendants and each of them are required to appear and answer therein in the District Court of the United States for the Eastern District of Texas, Texarkana Division, on the 25th day of June, 1928; that it has been stipulated by and between the said Hartford Fire Insurance Company and the defendants, W. D. Sanders and the Armour Fertilizer Works that the hearing upon said ap-

plication and said bill shall be continued from June 25, 1928, until July 2, 1928, and that the hearing shall at that time be heard in the District Court of the United States for the Eastern District of Texas, at Texarkana, Texas.

Further answering the said Hartford Fire Insurance Company alleges and states that the proceeds of said insurance in the sum of $4250.00 as aforesaid, is exempt from attachment and garnishment in this action by reason of said money being the proceeds of fire insurance covering loss of property used and occupied by the said W. D. Sanders as a homestead and exempt under the laws of the State of Texas in which said property was situated.

Wherefore, the said Hartford Fire Insurance Company, garnishee, having fully answered, prays that it may be discharged as garnishee in this action.

Hartford Fire Insurance Co.,
By M. D. Looney.

*State of Illinois, County of Cook, ss.*

M. D. Looney, being duly sworn, deposes and says that he is the official general adjuster of the Hartford Fire Insurance Company, and as such general adjuster is the duly authorized agent for and on behalf of the garnishee defendant, Hartford Fire Insurance Company, to verify the foregoing answer; that he is acquainted with all the facts and that the foregoing answer is true in substance and in fact.

M. D. Looney.

Subscribed and sworn to before me this 27th day of June, A. D. 1928.

(Seal) Dorothy Hoffmann,
Notary Public.

My commission expires September 16, 1930.

*State of Illinois, County of Cook, ss.*

I, James A. Kearns, Clerk of The Municipal Court of Chicago, in said county and state and the keeper of the records and files thereof, in the city, county and state aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete transcript, of the record in a certain cause lately pending in said court, wherein Armour Fertilizer Works, a corporation, trading as Planters Fertilizer & Chemical Co., is plaintiff, and W. D. Sanders is defendant.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Chicago aforesaid, this eighteenth (18th) day of December, 1928.

James A. Kearns, Clerk.

United States of America.

In the City of Chicago, County of Cook, State of Illinois.

*State of Illinois, County of Cook, City of Chicago, ss.*

I, Harry Olson, Chief Justice of The Municipal Court of Chicago, do hereby certify that James A. Kearns, whose name is subscribed to the foregoing certificate of attestation, now is, and was, at the time of signing and sealing the same, the clerk of said Municipal Court of Chicago, and keeper of the seal and records

thereof, duly elected, commissioned, and qualified; that full faith and credit are, and of right ought to be given to all his official acts as such, in all courts of record in the United States and elsewhere and that the attestation is in due form of law and by the proper officer.

Given under my hand at my Chambers in Chicago, this 18th day of December, A. D. 1928.

Harry Olson (Seal)
Chief Justice of The Municipal Court of Chicago.

United States of America.

*State of Illinois, County of Cook, City of Chicago, ss.*

I, James A. Kearns, Clerk of The Municipal Court of Chicago, do hereby certify that Hon. Harry Olson, whose name is subscribed to the foregoing certificate of attestation, now is, and was, at the time of the signing thereof, the chief justice of The Municipal Court of Chicago, duly elected, commissioned and qualified, and that his said signature is genuine.

In witness whereof, I have signed my name and affixed the seal of said Municipal Court of Chicago this 18th day of December, A. D. 1928.

James A. Kearns,
Clerk of The Municipal Court of Chicago.

Mr. Scarborough: We offer in evidence sections of the statutes of Illinois relating to this matter, as follows:

Section 2 (in part). (Of An Act in relation to a municipal court in the City of Chicago.)

"Sec. 2. That said Municipal Court shall have jurisdiction in the following cases:

"First: Cases to be designated and hereinafter referred to as cases of the first class, which shall include (a) all actions on contracts, express or implied, when the amount claimed by the plaintiff, exclusive of costs, exceeds one thousand dollars ($1,000.)"

Section 1. (Of an Act in regard to attachments in courts of record of the State of Illinois.)

Be it Enacted by the people of the State of Illinois, represented in general assembly: That in any court of record having competent jurisdiction, a creditor may have an attachment against the property of his debtor, or that of any one or more of several debtors, when the indebtedness exceeds $20, in any one of the following cases:

"First: Where the debtor is not a resident of this state.

"Second: Where the debtor conceals himself or stands in defiance of an officer, so that process cannot be served upon him.

"Third: Where the debtor has departed from this state with the intention of having his effects removed from this state.

"Fourth: Where the debtor is about to depart from the state with the intention of having his effects removed from this state.

"Fifth: Where the debtor is about to remove his property from this state to the injury of such creditor.

"Sixth: Where the debtor has, within two years preceding the filing of the affidavit required, fraudulently conveyed or assigned his effects, or a part thereof, so as to hinder or delay his creditors.

Seventh: Where the debtor has, within two years prior to the filing of such affidavit, fraudulently concealed or disposed of his property so as to hinder or delay his creditors.

Eighth: Where the debtor is about fraudulently to conceal, assign or otherwise dispose of his property or effects, so as to hinder or delay his creditors.

Ninth: Where the debt sued for was fraudulently contracted on the part of the debtor; provided, the statements of the debtor, his agent or attorney, which constitute the fraud, shall have been reduced to writing, and his signature attached thereto, by himself, agent or attorney."

Section 2. (Of an Act in regard to attachments in courts of record in the State of Illinois.)

"To entitle a creditor to such writ of attachment, he or his agent or attorney shall make and file with the clerk of such court, an affidavit setting forth the nature and amount of the indebtedness, after allowing all just credits and set-offs, and any one or more of the causes mentioned in the preceding section, and also stating the place of residence of the defendants, if known, and if not known, that upon diligent inquiry the affiant has not been able to ascertain the same."

Section 4. (Of an Act in regard to attachments in courts of record in the State of Illinois.)

"Before granting an attachment, as aforesaid, the clerk shall take bond and sufficient security, payable to the defendant against whom the writ is to be issued, in double the sum sworn to be due, conditioned for satisfying all costs which may be awarded to such defendant, or to any others interested in said proceedings, and all damages and costs which shall be recovered against the plain-

tiff, for wrongfully suing out such attachment—which bond, with affidavit of the party complaining, or his agent or attorney, shall be filed in the office of the clerk granting the attachment. Every attachment issued without a bond and affidavit taken, is hereby declared illegal and void, and shall be dismissed."

Section 5. (Of an Act in regard to attachments in courts of record in the State of Illinois.)

"The condition of the bond required in the preceding section shall be substantially in the following form:

"The condition of this obligation is such, that whereas, the above bounden . . . hath, on the day of the date hereof, prayed an attachment out of the court of said county, at the suit of against the estate of the above named for the sum of and the same being about to be sued out of said court, returnable on the day of . . next, to the term of the court then to be holden: Now, if the said shall prosecute his suit with effect, or in case of failure therein shall well and truly pay and satisfy the said all such costs in said suit, and such damages as shall be awarded against the said . . , his heirs, executors or administrators, in any suit or suits which may hereafter be brought, for wrongfully suing out the said attachment, then the above obligation to be void; otherwise to remain in full force and effect."

Section 6. (Of an Act in regard to attachments in courts of record in the State of Illinois.)

"The writ of attachment required in the preceding section shall be directed to the sheriff, or in case he is interested, or otherwise disqualified or prevented from acting, to the coroner of the

county in which the suit is commenced, and shall be substantially in the following form:

*The People of the State of Illinois. To the Sheriff of County, Greeting:*

Whereas A. B. (or agent or attorney of A. B., as the case may be), hath complained that C. D. is justly indebted to the said A. B. to the amount of and that (here state the cause set out in the affidavit), and the said having given bond and security, according to law: We therefore command you that you attach so much of the estate, real or personal, of the said C. D., to be found in your county, as shall be of value sufficient to satisfy the said debt and costs, according to the complaint, and such estate so attached in your hands so secure, or so to provide, that the same may be liable to further proceedings thereupon, according to law; and that you summon C. D. to appear and answer the complaint of the said A. B., at a court, to be holden at , in the county of , upon the day of next; and that you also summon , and such other persons as you shall be required by the said A. B., as garnishee, to be and appear at the said court on the said day of next, then and there to answer to what may be objected against them. When and where you shall make known to the said court how you have executed this writ, and have you then and there this writ.

"Witness: clerk of the said court, this day of in the year of our Lord, etc."

Which attachment shall be signed by the clerk, and the seal of the court affixed thereto."

Section 16. (in part) (of an Act in relation to a Municipal Court in the City of Chicago.)

"Section 16.

"He (the bailiff of the municipal court) shall perform with respect to said municipal court the duties usually performed by sheriffs in respect to attendance upon, and the service and execution of the process."

Section 31. (Of an Act in regard to attachments in courts of record in the State of Illinois.)

"The plaintiff, in any action of assumpsit, debt, covenant, trespass or trespass on the case, having commenced an action by summons or capias, may, at any time pending such suit, and before judgment therein, on filing in the office of the clerk where such action is pending, a sufficient bond and affidavit showing his right to an attachment under the first section of this Act, sue out an attachment against the lands, goods, chattels, rights, moneys, credits and effects of the defendants, which said attachment shall be entitled in the suit pending and be in aid thereof; and such proceedings shall be thereupon had as required or permitted in original attachments as near as may be: Provided, this section shall not apply to actions in which the defendant has been arrested and has given special bail: And provided further, that in all actions of trespass on the case, before a writ of attachment shall be issued the plaintiff, his agent or attorney, shall apply to a judge of a court of record or a master in chancery of the county in which the suit is pending and be examined, under oath, by such judge or master concerning the cause of action; and thereupon such judge or master shall indorse upon the affidavit the amount of damages for which the writ shall issue, and no greater amount shall be claimed."

Section 21. (Of an Act in regard to attachments in courts of record in the State of Illinois.)

"When the sheriff or other officer is unable to find property of any defendant, sufficient to satisfy any attachment issued under the provisions of this act, he shall summon the persons mentioned in such writ as garnishees, and all other persons within this county whom the creditor shall designate as having any property, effects, choses in action or credits, in their possession or power, belonging to the defendant, or who are in anywise indebted to such defendant, the same as if their names had been inserted in such writ; the persons so summoned shall be considered as garnishees, and the sheriff shall state in his return, the names of all persons so summoned, and the date of such service on each."

Section 33. (Of an Act in regard to attachments in courts of record in the State of Illinois.)

"Upon the return of attachments issued in aid of actions pending, unless it shall appear that the defendant or defendants have been served with process in the original cause; notice of the pendency of the suit, and of the issue and levy of the attachment, shall be given as is required in cases of original attachment; and such notification shall be sufficient to entitle the plaintiff to judgment, and the right to proceed thereon against the property and estate attached, and against garnishees, in the same manner and with like effect as if the suit had been commenced by attachment."

Section 22. (Of an Act in regard to attachments in courts of record in the State of Illinois.)

"When it shall appear by the affidavit filed, or by the return of the officer, that a defendant in any attachment suit is not a resident of this state, or the defendant has departed from this state, or in due inquiry cannot be found, or is concealed

within this state, so that process cannot be served upon him, it shall be the duty of the clerk of the court in which the suit is pending to give notice, by publication at least once in each week for three weeks successively, in some newspaper published in this state, most convenient to the place where the court is held, of such attachment, and at whose suit, against whose estate, for what sum, and before what court the same is pending, and that unless the defendant shall appear, give bail, and plead within the time limited for his appearance in such case, judgment will be entered, and the estate so attached will be sold. And such clerk shall, within ten days after the first publication of such notice, send a copy thereof, by mail, addressed to such defendant, if the place of residence is stated in such affidavit; and the certificate of the clerk that he has sent such notice in pursuance of this section, shall be evidence of that fact."

Section 48 (in part). (Of an Act in relation to a municipal court in the City of Chicago.)

"(b) If the plaintiff, his agent or attorney shall file in any attachment, replevin, distress for rent or forcible detainer suit an affidavit stating that the defendant is not a resident of this State, or has departed from this State, or on due inquiry cannot be found, or is concealed within this State so that process cannot be served upon him, and also stating the place of residence of the defendant, if known, and if not known, that upon diligent inquiry the affiant has not been able to ascertain the same, then if the case be attachment or distress for rent case and the amount claimed by the plaintiff, exclusive of costs, does not exceed two hundred dollars, or if the case be a forcible detainer case and no claim for rent is joined with the complaint for possession the defendant may be notified by posting and mailing of notices as hereinafter provided

in this section; but if the case be an attachment or distress for rent case and the amount claimed by the plaintiff, exclusive of costs, exceeds two hundred dollars, or if the case be replevin, the defendant may be notified by publication or publication and mailing of notices as hereinafter provided in this section; if the case be one of the trial of the right of property or any other case where others interested in the litigation should be notified, such notice to the defendant and others interested shall be given as shall be ordered by the court.

(c) Whenever notice by publication is required or proper to be given to any defendant, it shall be the duty of the clerk of said court to give notice by publication at least once in each week for three weeks successively in some newspaper of general circulation published in said City of Chicago, which notice shall be directed to the defendant, shall state the nature of the process against the defendant, at whose instance issued, the amount claimed to be due, if for a money demand, the time and place of trial, and shall also state that unless said defendant shall appear at the time and place fixed for trial, judgment will be entered by default, and shall also state the character of the judgment that will be rendered in said cause and of the execution that will be issued thereon, and the clerk of the court shall mail to each of the defendants at their last known places of residence as stated in the affidavit filed as a foundation for said publication, a copy of said notice within ten days after the first day of the publication of the same. Whenever notice by posting is required or proper to be given to any defendant, said notice shall be in the name of the clerk of the court, be directed to the defendant, shall state the nature of the process against the defendant and at whose instance issued, the amount claimed to be due if for a money demand, the time and place for trial,

and shall also state that unless said defendant shall appear at the time and place fixed for trial, judgment will be entered by default, and shall also state the character of the judgment that will be rendered in said cause and of the execution that will be issued thereon, three copies of which notice the bailiff shall post in three public places in the neighborhood of the court where said cause is to be tried, at least ten days prior to the day set for the trial, and if the place of residence of the defendant is stated in the affidavit on file, the bailiff shall at the same time mail one copy of the notice addressed to such defendant at such place of residence and on or before the day set for trial said bailiff shall file said notice with an endorsement thereon stating the time when and places where he posted and to whom and at what address he mailed copies as herein required. For want of sufficient notice any cause may be continued from time to time until the court has jurisdiction of any defendant."

Section 21 (in part). (Of an Act in relation to a municipal court in the City of Chicago.)

"Sec. 21. That there shall be no stated terms of the Municipal Court, but said court shall always be open for the transaction of business."

Section 28. (Of an Act in relation to a municipal court in the City of Chicago.)

"Sec. 28. That, until otherwise provided by the rules of the Municipal Court, cases of the first class mentioned in section two (2) of this act shall be commenced and prosecuted in said Municipal Court in the same manner in which similar suits and proceedings are required to be commenced and prosecuted in the circuit courts, except as is herein

otherwise prescribed, and excepting also in the following particulars:

First. The summons, when the first process is a summons, or the writ, when the first process is a writ, shall be directed to the bailiff to execute and shall be returnable upon some Monday at least five days, and not more than twenty days, after the date thereof.

Second. Service of such summons or writ shall be made by delivering a copy thereof to the defendant, if an individual, and informing him of the contents thereof, but if any defendant be a corporation, the service shall be made in the manner provided by law for similar cases in the circuit courts.

Third. Notice to the defendant by publication may be given under like circumstances and in the same manner as is provided by law for similar cases in the circuit courts, but the notice published, in lieu of stating the time of the return of the summons or writ, shall state the date on or before which the defendant is required to appear, which date shall be some Monday not less than forty nor more than sixty days after the date of the first publication of notice, as the plaintiff may require.

Fourth. No such suit shall be commenced in the Municipal Court unless the defendant, if there be but one defendant, resides or is found within the City of Chicago, or if the defendant be a corporation, unless its principal office is within said city; but if the defendant be a corporation not having a principal office in the City of Chicago, such suit may be brought in the Municipal Court wherever service of process may be had within the city upon any officer, agent or employe of such corporation upon whom service of process might be had if issued in a suit commenced in the Circuit Court.

Fifth. The provisions of paragraph fourth above shall not apply to attachment suits, replevin suits, or cases of distress for rent brought against nonresidents of this state, which suits may be brought in the Municipal Court when any property of the defendant is levied upon, or distrained, or any garnishee resides or is found within the City of Chicago, or, if the suit be a replevin suit, when the property sued for is replevied within the City of Chicago.

Sixth. When there are several defendants, one of whom resides or is found or is served with process in the City of Chicago, a summons or writ may be issued to the sheriff of Cook County for any defendant residing or to be found in said county, but outside of the City of Chicago, or to the sheriff of any other county for any defendant residing or to be found in such county, and service of any summons or writ so issued shall be made in the same manner as herein required in the case of a summons or writ directed to the bailiff: Provided, however, that no judgment shall, in any case, be rendered against any defendant served with process outside of the City of Chicago unless judgment be also rendered against a defendant served within said City of Chicago.

Seventh. The plaintiff shall file his declaration within three days after the commencement of the suit, in default whereof the suit shall be dismissed unless the court by an order entered in said suit shall extend the time for filing such declaration."

Section 24. (Of an Act in regard to attachments in courts of record in the State of Illinois.)

"If, for want of due publication or service, the cause shall be continued, the same proceedings shall be had at a subsequent term of the

court, as might have been had at the term at which the writ is returnable."

Section 23. (Of an Act in regard to attachments in courts of record in the State of Illinois.)

"No default or proceeding shall be taken against any defendant not served with summons, unless he shall appear, until the expiration of ten days after the last publication as aforesaid."

Section 35. (Of an Act in regard to attachments in courts of record in the State of Illinois.)

"When the defendant shall be notified as aforesaid, but not served with process, and shall not appear and answer the action, judgment by default may be entered, which may be proceeded upon to final judgment as in other cases of default, but in no case shall judgment be rendered against the defendant for a greater sum than appears, by the affidavit of the plaintiff, to have been due at the time of obtaining the attachment, with interest, damages and costs; and such judgment shall bind, and a special execution shall issue against the property, credits and effects attached, and no execution shall issue against any other property of the defendant; nor shall such judgment be any evidence of debt against the defendant in any subsequent suit."

Section 37. (Of an Act in regard to attachments in courts of record in the State of Illinois.)

"All judgments in attachments against the same defendant, returnable at the same term, and all judgments in suits by summons, *capias* or attachment against such defendant, recovered at that term or at the term when the judgment in the first attachment upon which judgment shall be recovered is rendered, shall have *pro rata*, according to the amount of the several

judgments, in the proceeds of the property, attached, either in the hands of a garnishee or otherwise: Provided, when the property is attached while the defendant is removing the same or after the same has been removed from the county, and the same is overtaken and returned, or while the same is secreted by the defendant, or put out of his hands, for the purpose of defrauding his creditors, the court may allow the creditor or creditors through whose diligence the same shall have been secured a priority over other attachments or judgment creditors."

An Act to revise the law in relation to notices.

Section 1. Be it enacted by the people of the State of Illinois, represented in General Assembly: That when any notice shall be required by law, or the order of court; or by any contract, to be published in any newspaper, and no other mode of proving the same is provided, the certificate of the publisher, by himself or his authorized agent, with a written or printed copy of such notice annexed, stating the number of times which the same shall have been published, and the dates of the first and last papers containing the same, shall be sufficient evidence of the publication therein set forth.

Section 2. Whenever any notice is required by law to be published by any clerk, sheriff, master in chancery, or other officer, in a newspaper, the plaintiff or complainant, or his attorney, shall have the right to direct in what newspaper the notice shall be published, and if such officer shall make publication contrary to such direction, shall not be allowed to collect the costs thereof. This section shall not apply to any case where the court directs in what newspaper publication shall be made.

Section 3. Whenever notice is required by law, or order of court, and the number of publications is not specified, it shall be intended that the same be published for three successive weeks.

Section 4. When any notice is required by law or order of court, or any contract, and it is not otherwise provided, it shall be sufficient to publish the same in a weekly newspaper, and in no case shall any greater amount be chargeable as costs for the publication of such notice than will be sufficient to publish the same in such weekly newspaper.

Section 5. When any notice is required by law or contract to be published in a newspaper (unless otherwise expressly provided in the contract), it shall be intended to be in a secular newspaper of general circulation, published in the city, town or county, or some paper specially authorized by law to publish legal notices, in the city, town or county.

Section 6. In computing the time for which any notice is to be given, whether required by law, order of court or contract, the first day shall be excluded and the last included, unless the last is Sunday, and then it also shall be excluded.

Section 7. When any notice relating to any cause, matter or thing depending in any court of record, shall have been duly published, it may be paid for by the party at whose instance the same was published, and the expense, or so much thereof as shall be deemed reasonable, may be taxed as costs, or otherwise allowed in the course of the proceedings to which such notice shall relate.

Section 8. When any notice shall be required by law, to be published by a public officer in

relation to public business, in pursuance of law, the reasonable expense thereof shall be allowed and paid out of the state or county treasury, as the case may require.

An Act to regulate service by publication in courts of record and to repeal acts in conflict therewith.

Section 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly: In all suits at law or in chancery, or in probate matters hereafter commenced in courts of record in this State where service by publication is required or against non-resident defendants who reside or have gone out of the State, or on due inquiry cannot be found or are concealed within the State so that process cannot be served upon them, it shall be sufficient publication if such notice shall be published at least once in each week for four successive weeks, the first publication to be at least thirty (30) days prior to the first day of the term of such court, in some newspaper of general circulation in the county in which such suit may be brought.

And the clerk of the court shall mail to the defendants, at their last known place of residence, as stated in the affidavit, a copy of said notice, within ten days after the first day of the publication of the same.

An Act concerning the publication of Legal Notices.

Section 1. Be it enacted by the people of the State of Illinois, represented in General Assembly:

That whenever it is required by law that any legal notice or publication shall be published in a newspaper in this state, it shall be held to mean a newspaper that has been regularly published for

at least six months prior to the first publication of said notice.

Section 5. (Of an Act in regard to garnishment.)

"When any person is summoned as a garnishee upon any process of attachment or garnishee summons issued out of a court of record, the plaintiff shall, at or before the term at which the garnishee is bound to appear, or within such further time as the court shall allow, exhibit and file, all and singular, such allegations and interrogatories, in writing, upon which he shall be desirous to obtain, and compel the answer of any and every garnishee, touching the lands, tenements, goods, chattels, moneys, choses in action, credits and effects of such defendant, and the value thereof, in his possession, custody or charge, or from him due and owing to the said defendant at the time of the service of said writ, or at any time after, or which shall or may thereafter become due; and it shall be the duty of every garnishee to exhibit, and file, under his oath or affirmation, within ten days after he shall be notified of the filing of such interrogatories, or if no notice of the filing of the same shall have been served upon him, then on or before the third day of the next succeeding term after the term at which such interrogatories are filed, full, direct and true answers to all and singular the allegations and interrogatories by the plaintiff so exhibited and filed; but in no case shall the garnishee be compelled to answer before the third day of the return term of the garnishee process."

Section 7. (Of an Act in regard to garnishment.)

"When the plaintiff in any garnishee proceeding shall allege that any garnishee served with

process, or appearing before any court, hath not truly discovered the lands, tenements, goods, chattels, moneys, choses in action, credits and effects, or if before a justice of the peace such personal effects of the defendant in the attachment suit or judgment, and the value thereof, in his possession, custody or charge, or from him due and owing to the defendant at the time of the service of the writ, or at any time after, or which shall or may thereafter become due, the court or justice of the peace shall immediately (unless the case shall for good cause be continued) proceed to try such cause, as against such garnishee, without formality of pleading. The trial shall be conducted as other trials at law, and if the finding or verdict shall be against the garnishee, judgment shall be given against him in the same manner as if the facts had been admitted by him, with all costs of such trial. If the finding shall be in favor of the garnishee, he shall recover his costs against the plaintiff. And in case the garnishee admits indebtedness to the judgment debtor, he shall not be liable for costs."

Section 16. (Of an Act in regard to garnishment.)

"The judgment against a garnishee shall acquit him from all demands by the defendant for all goods, effects, and credits paid, delivered or accounted for by the garnishee by force of such judgment."

Section 17. (Of an Act in regard to garnishment.)

"If the person summoned as garnishee is discharged, the judgment shall be no bar to an action brought against him by the defendant for the same demand."

Section 19. (Of an Act in regard to garnishment.)

"When judgment is rendered against any garnishee, and it shall appear that the debt from him to the defendant is not yet due, execution shall not issue against him until twenty days after the same shall become due, unless party asking the same, or his agent, shall make oath that he believes the debt will be lost unless execution shall issue as soon as said debt to defendant is due; but no sale of property, under such execution, shall take place until after the expiration of twenty days from date of judgment."

Mr. McKnight: For the purposes of the record, I want to offer in evidence two or three Illinois cases. I want to introduce in evidence the opinion of the Supreme Court of Illinois in the case of *Newman, et al.* v. *Commercial National Bank of Peoria*, 41 N. E. 165. I want to also offer the opinion of the Court of Appeals of Illinois in the same case, found in 55 Ill. App. 534. The opinion of the appellate court is made a part of the opinion of the supreme court.

I want to offer in evidence the opinion of the Supreme Court of Illinois in the case of *Illinois National Bank* v. *Indiana Banking Company*, as found in 2 N. E. 401; and the opinion of the Supreme Court of Illinois as found in the case of *Reeve* v. *Smith*, 113 Ill. 47; and the opinion of the Supreme Court of Illinois in *Martin* v. *Dryden*, 6 Ill. 187; and the opinion of the Court of Appeals of Illinois in the case of *Buckingham* v. *Shoyer*, 86 Ill. App. 364; and the opinion of the Supreme Court of Illinois in *Lancaster Insurance Company* v. *Corbetts*, 46 N. E. 631. All of those cases construe the garnishment and attachment statutes and the effect of the different steps of procedure taken under those statutes.

Then on the right of the Armour Fertilizer Works, under the laws of Illinois, to subject funds due under a policy of insurance where the insurance was written or issued upon property in some state other than the State of Illinois, and where the owner of the premises upon which the insurance was issued, and to whom the policy was issued—the right to subject the proceedings from that insurance in an action under the attachment and garnishment statutes in Illinois—I want to offer in evidence these cases by the Illinois courts, which also bear upon the fact that if the amount is shown to be due any time up to the time the answer is finally filed, the amounts are subject to the writ.

The first is *Pomeroy* v. *Rand-McNalley*, 41 N. E. 636, and a case in 46 N. E. 631; the case of *Hannibal* v. *Crane*, 42 Ill. 249; *Young* v. *First National Bank*, 51 Ill. 73; *Hanover Insurance Company* v. *Connor*, 20 Ill. App. 297; and *First National Bank* v. *Hoosier*, 234 Ill. App. 605.

Mr. Scarborough: We offer in evidence the testimony of A. F. Rackerby which was given at the previous trial of this case and which is shown in the printed record at pages 89 to 95, as follows:

A. F. RACKERBY, being duly sworn as a witness in this cause, testified in behalf of the defendant as follows:

*Examination by Mr. McKnight.*

Q. What is your occupation, Mr. Rackerby?
A. I am an attorney at law in Illinois.
Q. Where do you reside?
A. Chicago, Illinois.

Q. Are you licensed to practice in the Supreme Court of the State of Illinois?

A. Yes, sir.

Q. How long have you been a practicing attorney in Illinois?

A. About seven or eight years.

Q. During that time, have you had occasion to practice in the different courts of the State of Illinois?

A. Yes, sir.

Q. You are connected with the law department of Armour & Company in Chicago, Illinois?

A. Yes, sir.

Q. Mr. Rackerby, what is the jurisdiction of the Municipal Court of Chicago?

The Court: It is conceded that the court had jurisdiction of this case.

Q. Mr. Rackerby, you have examined the proceedings in the case of Armour Fertilizer Works, trading as Planters Fertilizer & Chemical Company, versus W. D. Sanders, pending in the Municipal Court of Chicago, Illinois?

A. Yes, sir.

Q. Have you gone through the various steps that have been taken in that case, as disclosed by the transcript of this record?

A. Yes, sir.

Q. I will ask you whether or not the steps that have been taken in that case are in accordance with the laws of the State of Illinois, wherein, in so far as those laws provide for a suit against a non-resident defendant and the service of garnishment upon a garnishee found in the State of Illinois?

A. They are.

Q. I will ask you if, under the laws of the State of Illinois, it is necessary to obtain any further con-

structive or substituted service upon a non-resident defendant than was obtained in that particular case in order to reach by garnishment a fund subject to the jurisdiction of that court?

A. No other process is required.

Q. This record discloses, Mr. Rackerby, that the suit was instituted in the Municipal Court of Chicago, Illinois, on July 8, 1927, and that subsequent to the filing of that suit affidavit and bond for garnishment or attachment was filed and approved by the clerk of the court, and that non-resident notice, citation by publication, was issued and notice mailed to Mr. W. D. Sanders, and thereafter a judgment was rendered in that cause in favor of Armour Fertilizer Works, trading as Planters Fertilizer & Chemical Company, against W. D. Sanders. I will ask you if you have had occasion to read the record of that judgment?

A. Yes, sir.

Q. Do you know what the effect of that judgment is in the State of Illinois, in so far as Mr. W. D. Sanders is concerned, and in so far as his rights in the insurance money is concerned, as fixed by laws and decisions of the Appellate Court of Illinois?

A. Yes, sir.

Q. That judgment has a recitation in it that the attachment be and is hereby sustained. What is the effect of that portion of the judgment, Mr. Rackerby?

A. The effect of that portion of the judgment is that the Armour Fertilizer Works, by virtue of that judgment, acquires the right to have their judgment against W. D. Sanders satisfied out of the funds that may be shown to be owing from the garnishees to W. D. Sanders.

Q. Under the laws of Illinois, Mr. Rackerby, I will ask you if funds owing by an insurance com-

pany under a fire insurance policy, is subject to garnishment in that state in a suit brought against the beneficiary in that policy and subsequent to the date of the loss or fire, and prior to the time the loss was adjusted or agreed upon between the insurance company and the beneficiary under the policy?

A. The fund or credit reached by the garnishment process is what the answer of the garnishee shows is owing at the time the answer is filed. Does that answer your question?

Q. I don't know whether it does or not. Let me ask you this question then: assuming that at the time the suit was filed, and at the time the writ of garnishment was issued and served upon the insurance company as garnishee, there had been a loss, but the exact amount of the loss had not been ascertained and determined at that time, but that subsequent to that time, and prior to the time the final answer was filed in the garnishment suit, the loss had been ascertained and determined and agreed upon, and had been set out in the final answer that was filed in the case, is that fund or debits or credits owing and set up in the answer, subject to garnishment under those circumstances, and subject to whatever rights the garnisheeing creditor has by reason of garnishment issued and served in the way outlined?

A. Yes.

Q. On these points, Mr. Rackerby, you have certain cases, have you, by the courts of Illinois?

A. Yes, sir.

Mr. McKnight: I can introduce those, I assume?

The Court: What is the use of them, if the proposition is not controverted at all?

Mr. McKnight: I tried, if the court please, to get counsel to agree to it, but they wouldn't agree that that was the law.

The Court: He can furnish a list of the authorities.

Mr. McKnight: Subject to our right to introduce these decisions, and offering portions of the statute, that is all.

*Cross Examination by Mr. Winfrey.*

Q. Under the laws of Illinois, a writ of garnishment, the effect of it, as in this case, is simply to create a lien against the funds, if on the final trial funds are found to be due. Is that right?

A. No, that is not correct.

Q. Well, what is the effect?

A. The effect is sometimes referred to by the Illinois Supreme Court as impounding the fund; sometimes the court will say it operates as an appropriation of the fund to the use of the plaintiff; and sometimes they refer to it as a court lien, which of course becomes absolute upon it being finally determined that there is anything owing from the insurance company to the defendant.

Q. If on a final trial of your garnishment suit that has been instituted, it is decided adversely to the Armour Company, you would have nothing then? You simply impound what might be owing. Nothing has been decided to be owing yet?

A. Not in this particular case.

Q. There has been no decision of any kind in the garnishment suit, has there?

A. That statement isn't correct. There has been no judgment against the garnishee, but the garnishee's answer does not deny the indebtedness. In fact, it admits the indebtedness, and the only reason that the judgment has not been entered against the insurance companies or garnishees in the Chicago case is because of the injunction issuing out of this court.

Q. The court in Chicago, in other words, has made no determination as to the rights of any of the parties?

A. Not at the present time.

*Re-Direct Examination by Mr. McKnight.*

Q. The judgment against Mr. Sanders that is rendered, what effect does that have, so far as he is concerned, in the suit?

Mr. Winfrey: I object to that as repetition.

Mr. McKnight: I just want to clarify the statement that counsel asked.

A. The judgment that is obtained against Sanders is now of record in the Chicago case, and which judgment expressly sustains the attachment, has this effect as between the Armour Fertilizer Works and Sanders; that is to say, it establishes the right of Armour Fertilizer Works to any fund that may be owing from the garnishees to Sanders, that right being superior to Sanders' right to that fund.

Q. There is not two suits. The garnishment was issued out of the suit against Mr. Sanders, wasn't it?

A. Yes, and the judgment, if and when it is entered against the insurance companies in the case in Chicago, will be entered in favor of W. D. Sanders against the insurance companies.

Q. It will run in his name?

A. It will run in his name. It will not be a judgment in favor of Armour Fertilizer Works against the insurance companies.

Mr. Winfrey: You get the funds, but he gets the judgment?

A. That's right.

C. C. CRUMP, being duly sworn as a witness in this cause, testified in behalf of defendant Armour Fertilizer Works as follows:

*Direct Examination by Mr. Scarborough.*

My name is C. C. Crump. I live at DeKalb and have for 37 years. I am president of a bank there. I knew W. D. Sanders during the time he lived there and when he left there in February of 1928 or '29.

Q. Mr. Crump, it must have been earlier than that. To refresh your recollection, wasn't it 1927? A. I said it was earlier. He left DeKalb three or four weeks before the bank he was connected with failed. The DeKalb Exchange Bank, a private bank with which he was connected closed. His father organized the bank and died in 1919, I believe. He and one sister were the sole heirs, except his mother. He carried on all of the business. I have not seen Mr. Sanders in DeKalb since he left a short time before the bank failed.

I know where he and Mrs. Sanders lived in DeKalb prior to the time he left there. It was a four-acre tract of land cut up into four lots of one acre each. I believe it was Block 3 of the Town of DeKalb.

Mrs. Sanders talked to me about selling that property not many days prior to the fire. I couldn't say just how many, but a few days. I don't think it was more than a week. With reference to whether she approached me or I approached her about buying the property, the way it came to me, I believe

she had talked to Mr. Harwell, a real estate man. The date of the fire was July 3, 1927.

He had charge of the business from the time his father died in 1919, until he left there in February, 1927.

He remained in DeKalb three weeks or a month after the bank failed, apparently to open another bank.

With reference to the proposal of sale put up to me, my wife told me that Mrs. Whybark, who lived close to Mrs. Sanders, said they wanted to sell the place, and she told her I might be interested in it. We were talking about building, so she said tell me to come and look at it, and I called Mrs. Sanders up and asked her if she would like to show us the house. We went over to look at the house, and when we got there Mrs. Sanders said she wanted to sell the property. I asked her what she would take for it. I had heard they would take $7,500.00, and she said $10,000. She didn't say where they were going to move to—I don't think we asked her that question. We understood from what she did say that she was expecting to move away. She said they were going to move off when they sold. She said they were going to move whether they sold or not.

With reference to whether she talked to us about buying the furniture separate from the property, I will state that we were not interested in it. I can't remember just what was said, but probably my wife

asked her what some piece of furniture was worth, but there wasn't so much furniture in the house. It seemed from the arrangement that the best furniture—that is, what I thought they would have had—wasn't there. I wouldn't say that they had sent away any of the furniture, but what was left indicated that the house wasn't completely furnished.

Q. You understood that some had been moved out? A. I had heard that.

Mr. Lane: I object to that, Your Honor.

The Court: It is objectionable. I won't consider the answer.

The Witness: I didn't buy the place. I don't recall that I saw Mrs. Sanders any more between that time and the time of the fire which destroyed the property.

I saw Mrs. Sanders after the fire. At that time we were taking our meals at the hotel in DeKalb, and the next day at noon after the fire Mrs. Sanders came into the hotel and had dinner. I remember she said she didn't know anything about the fire until she got back. I don't recall that I have seen Mrs. Sanders back in DeKalb since that date immediately after the fire. I have not seen Mr. Sanders after he left DeKalb in February, 1927.

Mr. Sanders left there after the 5th of February, 1927, shortly after the bank closed. I do not know where he went to. Some member of his family lived at the place all the time from February up to the day of the fire. I understood his wife and daughter left

the evening of the fire, probably about three or four o'clock. They had been living there all the time up until the afternoon before the fire when they left.

*Cross Examination by Mr. Lane.*

Q. Mr. Crump, you admit that Mrs. Sanders and her daughter were living in her house up to the time of the fire? A. They were there when I was there to look at the property, and so far as I know they had.

They had some furniture in there.

If Mr. Sanders had been back between February and July, I did not know anything about it, and the officers didn't either. Of my own knowledge I didn't.

Mrs. Sanders and her daughter had a lot of furniture in the house and were living in it just a few days before the fire. I don't know whether this furniture was still there when the house was burned. I presume it was.

Q. This talk about they were going to move—she said they wanted to sell the property and perhaps if they did sell the property they would? A. They did not say perhaps at all. They said they wanted to sell; that they were going to move.

Q. But hadn't up to the time of the fire. A. I stated they left the afternoon prior to the fire.

Q. That was a little overnight trip, wasn't it? You don't know where they were? A. They said at the dinner table that they were at Paris—that they had gotten to Paris—and didn't know anything about the fire until they got back.

Q. Then they came back without knowing anything about the fire?' A. That's what they said.

The Witness: With reference to whether Mr. Sanders and I had not been on very good terms for years, I will state that I don't know that we loved one another very much, but we were friendly.

The Court: You said, "Evidently the officers didn't know." Did this man have some trouble growing out of the banking operation?

A. I heard so.

The Court: Was he under indictment?

A. I think so.

Mr. Scarborough: For the court's information we will have proof about those indictments.

The Court: Was there any trouble he was trying to avoid by his absence? You said the officers did not know about his return.

A. Just his connection with the bank was all.

The Court: All right.

Mr. Lane: If the court please, I object to this testimony about the officers as being immaterial.

The Court: You can object. I don't see why you are doing it. It is favorable to you, if he had a forced absence rather than intended absence.

Mr. Scarborough: I think it material as a circumstance showing the character of intention under which he was working.

Mr. Lane: I withdraw the objection.

D. B. SIMMONS, being duly sworn, testified in behalf of defendant Armour Fertilizer Works as follows:

*Direct Examination by Mr. Scarborough.*

My name is D. B. Simmons. I live at Boston, Texas, and am District Clerk of Bowie County. I have the original of some indictments pending in my court.

These indictments were exhibited and introduced in evidence. Permission was granted to substitute a copy for the original indictments, which were introduced as follows:

Indictment No. 6384, styled: The State of Texas vs. Will Sanders, being an indictment for embezzlement by bailee, returned by the Grand Jury of Bowie County at the May Term of 1927.

Indictment No. 6383, styled: The State of Texas vs. Will Sanders, returned by the Grand Jury of Bowie County on May 24, 1927, also for embezzlement by bailee, showing bail fixed at $2,500.00 in each case.

Also indictment No. 6382, styled the State of Texas vs. Will Sanders, for embezzlement by bailee, returned by the Grand Jury of Bowie County on May 24, 1927, in which bail was fixed at $2,500.00.

Also indictment No. 6381, styled State of Texas vs. Will Sanders, also embezzlement by bailee, returned by the Grand Jury of Bowie County on May 24, 1927; bail $2,500.00.

Also indictment No. 6380, styled State of Texas vs. Will Sanders, returned by the Grand Jury of Bowie County, May 24, 1927, bail $2,500.00.

These indictments were substantially of the same form and charged embezzlement by bailee of various property. One of said indictments only is included herein:

INDICTMENT.

In the Name and by the Authority of the State of Texas:

The Grand Jurors, for the County of Bowie State aforesaid, duly organized as such at the May Term, A. D. 1927, of the District Court for said County, upon their oaths in said Court present that Will Sanders on or about the 4th day of February, A. D., one thousand nine hundred and twenty-seven and anterior to the presentment of this Indictment, in the County of Bowie and State of Texas was the bailee of certain property bailed to him by P. D. Covington, to-wit, United States Government Liberty Loan Bonds of the value of twenty-one hundred dollars, a better description of said property the grand jurors are unable to give, and which said property was the property of the said P. D. Covington; and had come into the possession and was under the care of the said Will Sanders by virtue of his said agency and employment as bailee aforesaid. And the said Will Sanders did then and there fraudulently, without the consent of the said P. D. Covington, his principal and employer, embezzle, misapply, and convert to his own use the

said proptry against the peace and dignity of the State.

Dan L. McDuffie
Foreman of the Grand Jury

Endorsed:

No. 6380. The State of Texas vs. Will Sanders Indictment.
Offense Embezzlement by Bailee.

The witness, continuing: The records of my office show that Mr. Sanders was never arrested under any of these indictments. These indictments are still in effect. They have never been tried or dismissed.

*Cross Examination by Mr. Lane.*

Nothing has been done with them at all. There has never been any arrest. With reference to my knowledge of any active attempt to serve Mr. Sanders, I will state that I know nothing except they were turned over to the sheriff's department.

C. A. GLASS, after being duly sworn, testified in behalf of defendant Armour Fertilizer Works as follows:

*Direct Examination by Mr. Scarborough.*

My name is C. A. Glass. I live at DeKalb, where I am railroad station agent for the Texas and Pacific. I have charge of the station there. I have been occupying that position for eleven years, continuously since 1920. I had a conversation with Mrs. W. D. Sanders in DeKalb on Tuesday before the fire on Saturday night or Sunday morning. She came to my office and ordered a car to ship her household goods to Wichita Falls,

Texas. I mean by ordering a car that she wanted a furniture car for the purpose of shipping household goods. I am talking about a railroad freight car. I got the car for her. The car was never loaded.

On Monday or Tuesday before the fire she shipped three large wardrobe trunks and a box, as I recall it. I am not positive where they were shipped for. I could not find my record. I could not state positively. Our records go into the Dallas office every month and I was not subpoenaed until Saturday afternoon and did not have time to find out. Mrs. Sanders told me they were moving to Wichita Falls and ordered the car for Friday before the house burned Saturday night or Sunday morning. She did not communicate with me Friday as to why she did not use the car. I did not hear any more from her until after the fire.

*Cross Examination by Mr. Lane.*

It was Mrs. Sanders who wanted the car. Not her daughter. I am sure of that.

Q. Was this car ordered for Mrs. Sanders' effects or was it for her daughter, or do you know about that? A. She told me she was moving to Wichita Falls.

Q. She said she was moving or her daughter? A. She was. Although this was in 1927 I have an accurate recollection and I am positive about that. I know she came to the office and told me she was moving to Wichita and wanted the car.

I did not have any loss in Mr. Sanders' bank.

What she said was that she was going to move to Wichita. With reference to whether she did actually move, I will state she didn't use the car. A few days prior to the fire some trunks were moved out but she was still in DeKalb. I could not state positively whether these trunks went to Paris or not.

I do not know whether Mrs. Sanders lived in Paris before she was married or not.

It is not a fact that the car was ordered by Mrs. Sanders' daughter. I am positive of that.

*Re-Direct Examination by Mr. Scarborough.*

I can't say positively whether I heard anything from Mrs. Sanders after the fire or not. It seems to me she called me on the phone and said she naturally wouldn't want the car since the house burned. I believe that is the way it terminated.

HENRY W. CARLTON, being duly sworn, testified as follows:

*Direct Examination by Mr. Scarborough.*

My name is Henry W. Carlton. I live at DeKalb and have lived there since 1912. I have some teams and am in the dray business. I knew Mr. and Mrs. W. D. Sanders when they lived there. I lived about three or four hundred yards from where they lived. I remember the occasion of the fire which destroyed the property in which they had been living. The fire was on Saturday night in July, 1927. I don't remember the date. The fire was in July after the bank with which Mr. Sanders was connected failed in

February. I saw Mr. Sanders in DeKalb some time after the bank failed but not immediately before the fire. I could not say definitely how long before the fire it had been since I had seen him in DeKalb.

I had occasion to do some drayage work for Mrs. Sanders a short time before the fire. I hauled some trunks for Mrs. Sanders to the depot the first part of the week, Monday or Tuesday before the fire. To the best of my knowledge I hauled three trunks and a box. I could not say definitely where these articles were shipped to, but they told me they were to go to New York. The day I got the trunks Mrs. Sanders made arrangement with me for doing some other drayage work for her. She talked to me personally about it. She wanted to know if I would move her household goods and place them in a car for her. She told me she had ordered a car for Friday and wanted me to be there on that day. That was Friday just before the fire. At the time of that conversation I looked at the furniture and fixtures in the house but did not put any price on moving it. I don't remember making any arrangement with her for any certain price.

With reference to whether she undertook to sell me any of the property in the house at that time, she asked me about a piano—if I would like to buy a piano. She told me what the piano cost, but I don't remember whether it was eight hundred or a thousand dollars. She said she would take $150.00 for it. I did not buy it. I did not go to the house Friday to

get the household goods and furniture because they sent me word not to come until Saturday. I did go on Saturday and she told me at that time to come back Monday morning. I did not go up to the house while it was burning that Saturday night, but I did go the next day or two after that.

Q. Did you examine the ruins around there, Mr. Carlton?

Mr. Lane: If the court please, I object to this line of testimony: it seems to be an obvious attempt to inject something into the case that has no bearing on it. There is nothing in the pleadings to prepare me to make any defense to this kind of an attack. It is beside the point.

Mr. Scarborough: I expect to show, if the court please, that part of the furniture had been moved out before the fire. Our contention about the matter is that a large part of this furniture had been actually moved out before the fire; that Mrs. Sanders left there on Saturday afternoon and expected to come back Monday for the purpose of moving out the rest of her goods and furniture, but not to come back and live there any more as a homestead. I might state in this connection that Mr. Lane has taken Mrs. Sanders' deposition, in which she denies selling any of the property except I believe $150.00 worth of odds and ends; denies moving any out or making any arrangements to. In anticipation that he is going to use this deposition, I want to go into the matter, and

also I think it is material upon the question of abandonment or intention.

Mr. Lane: I withdraw my objection if that is the purpose of it.

The witness continuing: I examined the ashes and ruins of the fire after that time. I did not find any evidence in the ashes of any metal pieces of this piano or any parts of furniture.

Q. In your opinion was that piano in that house when it burned?

Mr. Lane: I object to that, Your Honor. I think it is going far afield.

The Court: I sustain the objection.

Mr. Scarborough: I realize that this is not a question for expert opinion, but he was there and saw the condition.

The Court: I don't think he can give an opinion. He can state the facts he observed. I don't think he can give an opinion.

Mr. Scarborough: Do I understand the court to sustain the objection?

The Court: Yes, I sustain the objection.

Mr. Scarborough: We except.

The witness continuing: I saw Mrs. Sanders after the fire, but I did not talk to her.

Q. You knew after the fire she would not want you Monday to do any work. Did Mrs. Sanders in any of these conversations with you tell you where she was moving to? A. Yes, sir.

Q. Where did she say she was moving to? A. Wichita Falls.

*Cross Examination by Mr. Lane.*

Mrs. Sanders told me she expected to move to Wichita Falls. She hadn't moved at the time of the fire. She was living in the house at the time of the fire and came back the next day after the fire. She and her daughter were occupying this house the very day of the fire. I don't know it to be a fact that Mrs. Sanders' daughter was moving to Wichita Falls and not Mrs. Sanders, nor that the furniture that was going to be moved was Mrs. Sanders' daughter's furniture. I would not state that that is not a fact.

*Re-Direct Examination by Mr. Scarborough.*

I said that Mrs. Sanders told me she was moving to Wichita Falls.

H. N. MARTIN, being duly sworn, testified in behalf of Armour Fertilizer Works as follows:

*Direct Examination by Mr. McKnight.*

My name is H. N. Martin. I live at 1402 Olive Street, Texarkana. I am a barber. I have lived at DeKalb. I am 24 years old, and have been living in Texarkana two years in December.

Prior to the time I moved to Texarkana I lived all my life in DeKalb. I knew Mr. W. D. Sanders when he lived at DeKalb, and I knew where the house he formerly lived in that burned was. I lived just across the street from that house at the time of the fire. I was in the barber business at that time.

I remember when Mr. Sanders left there following the bank failure. I had noticed prior to the fire that the house was closed up or locked up. I hadn't seen any of them around the house in two or three weeks. I passed by there every day. Going to town to work I had occasion to go by the house—back of the house or in front of the house at times. Prior to the fire I had seen one or two trucks and a dray wagon apparently moving things out of there. I don't believe that the dray was there at the time the trucks were there. The dray wagon belonged to Mr. Carleton. It was there before I saw the trucks. I saw the trucks there, I believe it was on Friday afternoon about six o'clock before the house burned Sunday morning. The house burned before daylight Sunday morning. One truck is all I remember seeing, and it was on Friday evening around six o'clock. With reference to whether the truck was a moving transfer truck, or a small truck, I will state that it was a transfer truck. It was the kind of truck ordinarily used in moving household furniture, I think.

Mr. Lane: If the court please, I wish to except to this line of testimony. I understand the homestead law is a question of abandonment plus intention.

The Court: I don't see where it has any bearing except it might possibly warrant the inference these people had moved out and moved their personal furniture out of the place.

Mr. McKnight: That is the purpose of the testimony.

The Court: I think it would have some remote bearing.

Mr. Lane: Even if it proved that some furniture had been moved out on Friday afternoon it doesn't prove an abandonment.

The Court: I will let them interrogate him on that line.

The witness continuing: The truck was at the back of the house. I went around to the house of Mr. Shaw, the telephone man, the morning after the fire—while the house was on fire. It didn't look like there was any furniture or anything like that in the house so far as I could tell. The house was locked while it was burning. I couldn't get in at the front door. I had seen Mrs. Sanders at the house prior to the time of the fire. I saw her between eleven and twelve o'clock on Saturday before the fire on Sunday morning. At that time she was upstairs in the house. The shades were up so that I could see her. I was coming home from work when I saw her. I worked late on Saturday night. I was not in the house. It must have been about four o'clock Sunday morning when the house burned. I was over there that morning.

With reference to whether I saw in the ashes any unburned parts of any household goods or furniture such as brass knobs, metal, etc., I will state that all I remember seeing was some bedsteads and

bath fixtures. These were metal bedsteads. I didn't see anything else in the way of furniture, except those, that I remember.

*Cross Examination by Mr. Lane.*

My business in 1927 was that of a barber. I was not employed by any insurance company and wasn't making any personal investigation of the fire at that time. I had no interest in it except a casual interest of anybody in a fire.

Q. When did you first begin reviving in your memory all of these facts about the trucks and Mr. Sanders being there? A. We were talking about the truck over there. I thought they were moving. I was talking to my wife.

I am positive there was a truck there on Friday evening and I thought they were moving out. I didn't have any occasion to think about that since that time until recently. The first time I began reviving my recollection about it was when Mr. McKnight talked to me about it. It has been four years. I am positive that I saw Mrs. Sanders about eleven o'clock the night of the fire. There were two women up there and one of them was Mrs. Sanders. I didn't see a car in front. I came along the walk about 100 or 150 feet from the house. I lived across the street. With reference to the house being locked up for two or three weeks before, I will state that they dropped in and out. It had been two or three weeks since I had seen them there. I recall these matters very distinctly and I am positive about my testimony.

*Re-Direct Examination by Mr. McKnight.*

After I saw Mrs. Sanders there around eleven o'clock I heard a car crank up and leave from the back of the house. I have said that it had been two or three weeks since I had seen Mrs. Sanders around the house before I saw her the night of the fire.

The Court: When did you first state to anyone the occurrence you have developed from the witness stand?

A. We were all talking about it at the time it happened.

Q. Have you talked to any representative of the insurance company after the fire? A. No, sir.

Q. What person representing any of these parties did you first make a statement to and when did you make it? A. About this fire?

Q. Yes. You have talked to some representative of the insurance company about the facts you have testified to, didn't you? A. Yes, sir; I talked to Mr. Atchley this morning.

Q. You mean this morning is the first time you have ever talked to anyone about it? A. He came to the shop Saturday afternoon and wanted me to be here. This morning is the first time I talked about it.

Q. You haven't given a statement of your testimony to anyone prior to that time? A. Yes, sir.

*Re-Cross Examination by Mr. Lane.*

With reference to whether I thought the matter that I have detailed was significant, I will state that I did not think it any of my business. With reference to

how Mr. Atchley found out about me, I will state I was living across the street and he questioned me and I told him what I knew. With reference to what led Mr. Atchley to look me up, I was living across the street, and I guess he thought if anything like that had happened I would know about it. I know the insurance company made an investigation about the fire around DeKalb. They came to see my wife and mother-in-law. My wife knew what I knew. One of them came to see me. I have never made a statement about this matter at all before now.

The Court: Did you lose any money in the bank failure?

A. No, sir. I didn't have any money in it.

W. A. WELCH, being duly sworn, testified in behalf of Armour Fertilizer Works as follows:

*Direct Examination by Mr. Scarborough.*

My name is W. A. Welch. I have lived in DeKalb since 1907. I knew Mr. and Mrs. Sanders. Mrs. Sanders offered to sell to me and my wife the property in which they lived. This offer was after the bank failure and two or three months before the fire. We didn't buy it.

OBE CHASTEEN, being duly sworn, testified in behalf of Armour Fertilizer Works as follows:

*Direct Examination.*

My name is Obe Chasteen. I live in DeKalb and am in the taxi and service car business. I was in the same business in DeKalb in 1927. I knew Mr. and Mrs.

Sanders when they lived there. I know where Mr. and Mrs. Sanders were staying just before the fire in which their house was destroyed. Mrs. Sanders and her daughter were staying at the DeKalb Hotel. I stayed around the hotel every day until after dark. It was a Red Ball station and I stayed there to meet the Red Ball. I had occasion to see them around there every day and evening.

I never saw Mrs. Sanders on the evening before the fire. I never saw her nor her daughter until the next morning about one o'clock—it seemed to me like between one and two. I saw Mrs. Sanders' daughter come from the west with Jim Meyers in a Lincoln car. I was sitting out in front and they came in and went in the upper story of the hotel.

Mr. Lane: If the court please, I want to except to this line of testimony. It looks like nothing but an attempt to throw mud on the case. I object to this testimony about Mrs. Sanders and her daughter coming in that night.

The Court: I overrule the objection.

Mr. Lane: We except.

The witness continuing: The highway they came in on leads from DeKalb to Paris. The hotel is on the north side of the railroad and they came from the south and crossed the railroad and came to the hotel. I had not seen them that morning before the fire. That was the day after the fire. I have not seen Mrs. Sanders back in DeKalb at any time after the fire.

I have not seen Mr. Sanders at any time after that. He had already been gone for some time.

*Cross Examination by Mr. Lane.*

I am in the business of running a service car. I didn't lose any money in the bank failure.

Q. You say that Mrs. Sanders and her daughter were staying at the DeKalb Hotel before the fire? A. Yes, sir. They were lunching there.

Q. You mean they ate there? A. They were there when I left at night. Whether they stayed at night I don't know.

Q. You mean to say they stayed at the hotel? A. That's the only place I seen them; where they lunched; I don't know whether they stayed at night or not. I did not stay there at night.

Q. You don't mean to tell the court that they were registered guests at the hotel and not staying at home? A. They had been staying there three or four weeks.

Q. What do you mean by that? A. They were just staying there all the time. I would go there early every morning and they were there when I left at night. As to whether they slept there or not, I never saw them in bed.

They weren't in town the night of the fire. I did not see them. They were staying in DeKalb up to the time of the fire. Yesterday was the first day that I began talking about the facts in this case with a lawyer. Mr. Atchley asked me, did I know anything about where Mrs. Sanders stayed before the fire and

after Will left. He asked me when Will left, and I told him I didn't know. He asked me where Mrs. Sanders and her daughter stayed, and I told him to the best of my knowledge they stayed at the DeKalb Hotel. Mr. Bob Stuart was running the hotel. I didn't talk to anyone representing the insurance company or any attorneys about the time of the fire about when they left there. I had no occasion to think about the matter until a few days ago. Nobody said anything about Mrs. Sanders staying there until Mr. Atchley asked me yesterday.

The building burned Saturday night, and it was Sunday after the fire that they came in from the west. The girl drove in from the west in a car. I never saw the old lady.

Mr. Scarborough: That is all the witnesses we have. I have a certified copy of a power of attorney from Mr. W. D. Sanders to his wife.

The Court: What is the substance of that?

Mr. Scarborough: We offer in evidence a power of attorney from W. D. Sanders to his wife dated April 15, 1927, and acknowledged July 14, 1927, empowering her, among other things, to sell and dispose of Lots 1 to 4, Block 3, of the Old Town of DeKalb, which has been shown to be the property in question.

Mr. Lane: It is a general power of attorney, if the court please, authorizing the transaction of any business.

Mr. Scarborough: Defendant Armour Fertilizer Works rests.

J. S. (SID) CRUMPTON, being duly sworn, testified in behalf of defendant, W. D. Sanders, as follows:

*Direct Examination by Mr. Lane.*

My name is J. S. Crumpton. I live in Texarkana and am an attorney. I have been acquainted with Mr. W. D. Sanders for many years. The nature of my acquaintance with him has been very close and personal. I was his attorney for twenty years. I was representing or handling business in which he was closely interested in 1927. He consulted with me about the difficulties which came on him as a result of the bank failure in DeKalb in 1927.

With reference to what I knew about his leaving DeKalb, I will state that for three months we tried to re-establish the bank and could not do it. I was appointed receiver of the interests of the Fort Worth National Bank and settled the question of re-opening the institution. Mr. Sanders left DeKalb after I was appointed receiver.

Q. Do you know about the character of his absence, whether he intended it to be permanent, did he state to you?

Mr. Scarborough: We object to that as calling for a conclusion as to part of the question, and in the second place for a self-serving declaration.

The Court: I sustain the objection.

The witness continuing: I was in touch with Mr. Sanders during the period from February to July, 1927.

Q. Did you know anything about his moving away from DeKalb in any way? A. As to changing locations?

Q. Yes, sir, changing his home. A. No.

Mr. Scarborough: We object to the answer, saying he did not, as not responsive and a conclusion.

The Court: I think the question is very vague and indefinite as to whether he knew anything of his changing his location. He evidently changed his location, but as to whether or not he had any representations from him about his intention or anything of that kind, I think it would be immaterial. I think the question should be more specific.

The witness continuing: In my dealings with Mr. Sanders I had occasion to know whether he was moving from DeKalb permanently. He did not move from DeKalb permanently.

*Cross Examination by Mr. Scarborough.*

I don't think he has ever moved back there or established it as his home.

T. P. JENNINGS, being duly sworn, testified on behalf of W. D. Sanders as follows:

*Direct Examination by Mr. Lane.*

My name is T. P. Jennings? I live at Avery. I am acquainted with Mr. and Mrs. Sanders of DeKalb. I have known them I guess for twenty-five years or more. We have been intimate friends during that time.

Q. Do you know whether Mr. Sanders moved away from DeKalb in 1927?

Mr. Scarborough: We object, if the court please, to that question as calling for a conclusion.

The Court: I overrule the objection as to whether or not he knew when he moved in 1927.

Mr. Scarborough: We except.

The witness continuing: I will say that he did not move away. I know that his furniture, household goods and personal effects were in the house the day before the fire. I know they were there of my personal knowledge. Mrs. Sanders was living in the house at that time. Mr. Sanders was out of the county. I don't know at that time where he was. Mrs. Sanders' daughter was living in the house with her. Her daughter was married. I know from what they told me where her daughter's husband lived. I didn't hear of Mrs. Sanders proposing to move to Wichita Falls, if she was. She didn't talk to me anything about moving.

*Cross Examination by Mr. Scarborough.*

Mr. and Mrs. Sanders didn't move away from DeKalb in 1927. They never moved away. They went away. With reference to whether they still live there, they claim it as their home. I have seen Mrs. Sanders there since the fire, in 1929, I believe it was. I have not seen her there any other time. I carried her there from my home at Avery, Texas; about eleven miles from DeKalb. She had been visiting at our home in

Avery. I carried her to DeKalb in 1929. We just went on the premises where the house burned and left. She just looked over the premises. She was only there a few minutes. Except the one time in 1929 I have not known of Mrs. Sanders being there. I have not known of them acquiring any other home or property to live in at DeKalb. They claim it as their legal residence. They never established a home anywhere else. I have kept up with them.

I was there on Friday before the fire. I was there about two or three o'clock in the afternoon, I judge. There wasn't any moving vans out there while I was there. I was not there at six o'clock. I had gone. I was not there on Saturday the day of the fire.

I have a general power of attorney from Mr. and Mrs. Sanders. I got that a few days ago.

Q. May I see it? A. If it is necessary you can. If not, I won't show it.

The Court: All right. Let him have it.

Q. This power of attorney says (quoting): "and also giving to our said attorney full power to manage, lease, mortgage, sell or exchange any and all real estate wherever situate which we now own or may hereafter own, either individually or collectively, for such consideration and on such terms as he may see fit, and to execute, acknowledge and deliver in our names, jointly or in either of our names individually, and to seal with our seal any and all deeds, mortgages and other written instruments which may at any time be necessary or proper to carry into effect the powers heretofore

granted." What real estate did Mr. and Mrs. Sanders own? A. They own a half interest in the Dr. S.— place—in that property.

Q. Where is that?

Mr. Lane: If the court please, I think this is going far afield. I can't see its materiality.

Mr. Scarborough: I think it is very material if the court please.

The Court: On what phase of the case?

Mr. Scarborough: Determining whether or not this property is the homestead of these people. I am asking about what other real estate they owned. If they owned other real estate it would certainly support our contention that this has been abandoned.

The Court: There is no testimony about any other homestead at all. It is all with reference to this. You admit the fact of his homestead by your claim of abandonment.

Mr. Scarborough: We say it was at one time a homestead.

The Court: I don't think it is material to go into any other property. That is not the question.

Mr. Scarborough: We except to the ruling of the court.

The witness continuing: With reference to what was the purpose of giving this power of attorney on September 8th, only a week or two before the date of this trial, I will state that this is an individual estate now belonging to Mrs. Sanders individually, and we are expecting this estate to be partitioned sometime next

month, and Mrs. Sanders wanted me to handle this property and receive it in her name and account as her attorney in looking after her individual affairs.

Mr. Lane is the attorney for Mr. and Mrs. Sanders in this case. I am a witness. I am acting as their representative in this litigation whenever it is necessary. I advertised this property for sale before the fire. It has been sold since the fire. It was sold I think something like a year or more ago. I mean a year or more following the fire. It has been sold more than six months prior to this date. I did not advertise the furniture for sale. With reference to whether I advertised the house furnished, I will state that it was burned when I advertised it for sale. It had been destroyed by fire. I did not advertise it before the fire. All of the lots within that block were sold. The lot that the house was on and the adjoining lots were sold more than six months ago.

Witness excused.

Mr. Lane: We offer next the deposition of Mr. W. D. Sanders, if the court please, taken before Edwin D. Green, a Notary Public in Maricopa County, Arizona, under date of September 8, 1931.

*Direct Interrogatories.*

My name is W. D. Sanders. My age is 53 years. My last permanent address was DeKalb, Bowie County, Texas, which place I still claim as my home and legal residence. I am the W. D. Sanders who is a party defendant in this suit.

On July 3, 1927, I owned a house and lot in DeKalb, Bowie County, Texas. I had owned this house and lot for 27 years. I have lived in and occupied it for 27 years and was living in and occupying it on July 3, 1927. I was married on that date. I was living with my wife and family there on that date, and had lived with them continuously in said house since April 25, 1900. My family consists of my wife, Leslye Lewis Sanders and daughter, Elise Tandy. My wife and I had occupied said premises prior to July 3, 1927, for over 27 years since April 25, 1900. On July 3, 1927, I did not own any other residence property either in DeKalb or elsewhere. On July 3, 1927, I was occupying said property as a homestead for myself and wife.

Every article of furniture and household goods owned by me either there or elsewhere was in the house on July 3, 1927, and my family was living in and occupying the house on the date mentioned. The house was destroyed by fire on that date

I had not prior to that date decided to abandon said property as my homestead and had not moved away from it with that intent. I had not acquired another and different homestead from that property prior to July 3, 1927. I carried fire insurance on the house and furnishings in the National Fire Insurance Company and in the Hartford Fire Insurance Company.

I made a claim against these insurance companies on account of the fire which destroyed the property. The companies recognized my claim and agreed to pay 85 per cent of the face of the policies. I do not now

remember the amount of each policy. A total of $9,000 in insurance was divided as to $7,000 on the house and $2,000 on the furniture. I claim these proceeds as exempt, and made my first claim as such at the time of making proof of loss and have never abandoned such claim. I have not been paid any sum or sums whatever by either of the insurance companies on account of the damage by fire either to my house or household goods and furniture.

In answer to *Cross Interrogatories* the witness testified:

I was not in person in DeKalb on July 3, 1927, but was actually occupying the house on that date in that my family was in the house on that date; all of my household goods were in the house, as well as all of my own wearing apparel—other than the personal clothing in one bag I had with me. I was in Madison County, Mississippi.

I had not moved any of my furniture or household belongings from said premises on or prior to July 3, 1927. Not one single piece of furniture or household goods was ever moved from the house, but all were destroyed in the fire, including all of my personal wearing apparel. It is not a fact that I sold or tried to sell some of the furniture or household belongings immediately before July 3, 1927, with the intention of moving out of said premises. Being completely and wholly broke and not having sufficient money with which to eat on, we did sell about $150.00 worth of old furniture out of a total original cost of $8,000.

In answer to *Cross Interrogatories* propounded by the plaintiff insurance companies the witness testified:

I claim DeKalb, Bowie County, Texas, as my legal official residence. I have not established any legal domicile other than Bowie County, Texas, since July 3, 1927. I was a legal resident of Bowie County, Texas, during the months of May and June, 1928. I was temporarily at that time staying with relatives in Dallas, Texas. With reference to whether I have filed any answer in a garnishment or attachment suit brought by Armour Fertilizer Works in the Municipal Court of Cook County, Illinois, upon which garnishments or attachments have been issued as against the insurance companies who are plaintiffs in this suit, I will state that I have not filed any answer. I had no knowledge whatever of the suit being filed. I have never been served with any process or citation in the suit.

The witness T. P. JENNINGS was recalled, and in answer to questions propounded by the court testified as follows:

I handled the sale that was testified to with respect to this property and am familiar with the details of it. I can't say positively what was realized from the sale of this property. I think the consideration was $1,800.00, and we had to pay about $300.00 worth of taxes. It seems to me that they realized $1,500.00 out of the sale of the lots. They sold for $1,500.00 net. I don't remember the date of the sale nor the approximate date.

I don't have any means of refreshing my recollection as to the exact date of the sale.

Mr. McKnight: I think we have that here, Your Honor. A record in the other case shows a general warranty deed from W. D. Sanders and wife to T. D. Buttram, dated June 22, 1928; consideration $500.00 cash, one note for $500.00, one note for $1,000.00, total $2,000.00.

The court, continuing questioning the witness:

Q. That recites the true consideration? A. Yes, sir.

Q. Did you sell that under a power of attorney, or did Sanders and his wife execute a regular deed? A. They executed a regular deed.

Q. From themselves? A. Yes, sir.

Mr. Scarborough: Q. Mr. Jennings, in addition to the $2,000.00, the purchasers were to pay the taxes. A. No, sir; that is, that's my recollection.

The Court: That consideration as recited in the instrument was a true consideration; there was no additional consideration?

A. No, except we were to pay the taxes.

Mr. Lane: The defendant Sanders rests.

The Court: I don't think there is any persuasiveness in the inference of abandonment of the homestead. Personally I am not inclined to be sympathetic with this character of claim. If legally made and legally justified I am going to sustain it, but I don't think the evidence on the question of abandonment should be seri-

ously considered, because there has to be more than intention and disuse of the homestead, and I don't think there has been any establishment of that at all.

Mr. McKnight: If the court please, we can only show intention by circumstances.

The Court: I understand, the essential idea is that it is voluntary. The whole circumstance of his absence shows that it is an involuntary and forced absence. I don't like anything about the circumstances of the whole case. The connection with the fire and all that is shown, but I am not here to air out my individual views. I don't think there is any persuasive evidence on the issue of abandonment.

I would like to hear from you, gentlemen as to your ideas of the law pertaining to it. I don't think I want to hear from you very long. I want you to submit these matters on written briefs because I am trying to get away early this afternoon. I would like a statement from each side of the announcement of your proposition and views without argument.

The foregoing is approved as a true, complete and properly prepared statement of the evidence under Equity Rule 75 adduced at the hearing of the above numbered and entitled cause, and it is ordered that those parts thereof in question and answer form be so embodied in said statement of the evidence in the exact words of the witness as hereinabove shown, and it is further ordered that said statement of the evidence be filed in the clerk's office on this date and that it shall thereupon become a part of the record herein for the purpose of appeal.

RANDOLPH BRYANT,
*District Judge.*

We, the undersigned agree that the foregoing contains a true, complete and properly prepared statement of the evidence adduced at the hearing of the above numbered and entitled cause.

NATIONAL FIRE INSURANCE COMPANY,
By WILL C. THOMPSON,
*Attorney of Record.*

HARTFORD FIRE INSURANCE COMPANY,
By WILL C. THOMPSON,
*Attorney of Record.*

W. D. SANDERS,
By RODGERS & RODGERS,
WINFREY & LANE,
By ALVIN H. LANE,
*Attorneys of Record.*

MRS. W. D. SANDERS,
By RODGERS & RODGERS,
WINFREY & LANE,
By ALVIN H. LANE,
*Attorneys of Record.*

ARMOUR FERTILIZER WORKS,
By CANTEY, HANGER & MCMAHON,
By WARREN SCARBOROUGH,
*Attorneys of Record.*

Endorsed:

In the District Court of the United States for the Eastern District of Texas at Texarkana. Consolidated Case. No. 75 in Equity. National Fire Insurance Company vs. W. D. Sanders, et al. No. 76 in Equity. Hartford Fire Insurance Company vs. W. D. Sanders et al. Statement of the Evidence. Filed on 6th day of Oct., 1932. F. A. King, Clerk. By ..... Deputy.

## Findings of Fact and Conclusions of Law Made and Entered by the Court.

*In the District Court of the United States for the Eastern District of Texas, Texarkana Division.*

*Consolidated.*

*No. 75 in Equity.*

*National Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

The court having on May 24, 1932, made and filed findings of fact and conclusions of law in the above consolidated cause, and having allowed counsel until July 1, 1932, within which to file request for amplification, modifications or changes, and the court having heard and considered such proposed changes, makes the following findings of fact and conclusions of law, and overrules the requests for amplification and modification or changes made by all parties except as herein found:

FINDINGS OF FACT.

The companies named are insurance companies organized under the laws of Connecticut; they had issued policies of fire insurance to W. D. Sanders, a citizen of Texas residing within the Texarkana Divi-

sion of the United States District Court for the Eastern District of Texas, which policies covered a dwelling house owned by him situated in DeKalb, Bowie County, Texas. This building was destroyed by fire on or about July 3, 1927, and eventually the insurance was adjusted by the companies at $3,400.00 by the National Fire Insurance Company, and $4,250.00 by the Hartford Fire Insurance Company. Both insurance companies were doing business in the State of Illinois. After the fire, but before the adjustment of the loss and on July 18, 1927, the Armour Fertilizer Works, a corporation organized under the laws of Illinois and domiciled in Chicago, filed suit in the Municipal Court of Chicago against Sanders to recover on certain promissory notes amounting in principal and interest to $7,589.81. Jurisdiction was obtained by the issuance, service and publication in accordance with the laws of Illinois of non-resident notice to Sanders, and through garnishment proceedings against the insurance companies. All proceedings in said suit were valid and in accordance with the statutes of the State of Illinois. It was conceded that although the amount of insurance due Sanders had not been adjusted at the time said suit was filed, that whatever amount was determined upon was due at that time. Sanders did not appear, and judgment by default was entered against him, which judgment also sustained the attachment or garnishment proceedings. The insurance companies answered in the attachment proceedings in Chicago, admitting the facts relative to the adjustment of their indebtedness to Sanders in the

amounts indicated, but setting up the claim made by Sanders in this controversy that the building which was destroyed by fire and covered by the policies of insurance was his homestead, and that the proceeds of the policies were exempt to him under the laws of Texas. Judgment had not been entered against the insurance companies when these suits were filed and this court issued an injunction against Armour Fertilizer Works preventing it from proceeding to final judgment against the insurance companies in the case pending at Chicago, pending the final outcome and determination of this controversy in this court.

It is conceded by the parties that the courts of Illinois would not recognize the exemption claimed by Sanders.

During the year 1928 Sanders sold the lots upon which his residence destroyed by fire had been located, realizing approximately $2,000.00 therefrom.

Sanders is at present a fugitive from justice under indictments pending against him in the state court.

CONCLUSIONS OF LAW.

That the effect of the garnishment proceedings had within the State of Illinois on behalf of Armour Fertilizer Works did not, prior to final judgment in that jurisdiction, create any lien against the funds of the debtor, and did not subject such funds to collection for the benefit of the attaching creditor absent a final judgment in the garnishment proceedings.

That the claim of exemption of the funds by W. D. Sanders should accordingly prevail.

That the petition in intervention of Mrs. W. D. Sanders be dismissed at her cost, she not being either a necessary or proper party to this proceeding.

That as attorneys' fees and for costs incurred by them the insurance companies each be allowed $476.85 out of the funds deposited in the registry of this court.

That the monies thus awarded Sanders, however, be paid to him only upon his personal receipt therefor, this provision to be without prejudice to the right of disbursement of such funds directly to the attorneys to the extent of their interest therein.

Armour Fertilizer Works in open court excepted to the action of the court in overruling its objections to said findings of fact and conclusions of law, and in overruling its motion for additional and different findings of fact and conclusions of law.

Counsel shall have until July 15th within which to prepare and submit to the court proper form of decree. This June 30th, 1932.

RANDOLPH BRYANT,
*Judge.*

Endorsed:

In the United States District Court for the Eastern District of Texas, Texarkana Division. Consolidated. No. 75 in Equity. National Fire Insurance Company vs. W. D. Sanders, et al. No. 76 in Equity. Hartford Fire Insurance Company vs. W. D. Sanders, et al. Findings of Fact and Conclusions of Law. Filed on 30th day of June, 1932. F. A. King, Clerk. By Deputy.

## Armour Fertilizer Works' Objections and Exceptions to the Findings of Fact and Conclusions of Law and Motion for Additional Findings of Fact and Conclusions of Law.

*In the District Court of the United States for the Eastern District of Texas, Texarkana Division.*

*Consolidated.*

*No. 75 in Equity.*

*National Fire Insurance Company*

vs.

*W. D. Sanders, et al.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company*

vs.

*W. D. Sanders, et al.*

Now comes Armour Fertilizer Works, one of the defendants in the above styled and numbered causes, and presents this, its exceptions to the findings of fact and conclusions of law entered herein on May 24, 1932, and also its motion for amplification and changes in said findings of fact and conclusions of law, and respectfully shows to the court as follows, to-wit:

1.

This defendant excepts to the failure of the court to find as a fact and/or conclude as a matter of law that the dwelling house covered by said insurance had been abandoned as a homestead by W. D. Sanders

and wife prior to the time the same was destroyed by fire.

2.

This defendant objects and excepts to the conclusion of law as made by the court that the effect of the garnishment proceedings had in the State of Illinois did not create any lien against the funds of the debtor, and did not subject such funds to collection for the benefit of attaching creditors absent a final judgment in the garnishment proceedings, because the proceedings had in the Municipal Court of Chicago were in all things regular and in strict compliance with the statutes of such state, and the institution of such proceedings and the service of the garnishment or attachment process upon the insurance companies had the effect of creating a lien in favor of Armour Fertilizer Works upon the funds in question for the payment of its debt due from Sanders; and because the conclusion of law as made by the court fails to give to such judicial proceedings and the lien and rights created and existing by virtue thereof the full faith and credit to which such judicial proceedings, liens and rights are entitled under and by virtue of the Constitution of the United States.

3.

Defendant Armour Fertilizer Works moves the court to make the following findings of fact and conclusions of law in addition to those made, or in lieu of those made, in so far as the same may be in conflict with those made:

FINDINGS OF FACT.

(a) On July 18, 1927, Armour Fertilizer Works filed suit in the Municipal Court of Chicago, Illinois, a court of competent jurisdiction, in which it named as the original defendant W. D. Sanders, and issued and had published nonresident notice upon the said W. D. Sanders in accordance with the laws of the State of Illinois, and issued and had served upon the legal agent at Chicago, Illinois, of each of the plaintiffs a writ of garnishment in accordance with the laws of the State of Illinois; that thereafter W. D. Sanders, though duly cited in accordance with the laws of Illinois, failed to appear, and judgment by default was entered against him, which judgment also sustained the attachment.

(b) That prior to the fire by which the dwelling house in question was destroyed, W. D. Sanders and wife had abandoned said property as their homestead, and that the same did not constitute their homestead at the time of the fire.

(c) That under the laws of Illinois the claim of homestead exemption, even though said property had not been abandoned as a homestead, would not prevent Armour Fertilizer Works from subjecting the proceeds of said insurance to the payment of its debt, and Armour Fertilizer Works could and would have obtained a final judgment against said insurance companies to the extent of its debt, or to the extent of the funds impounded by said garnishment, had it not been prevented from doing so by the injunction of this court.

CONCLUSIONS OF LAW.

(a) That the funds in the registry of this court are not exempt to Sanders and his wife, because they had abandoned their homestead prior to the fire in question.

(b) Armour Fertilizer Works acquired a lien upon said funds by virtue of the suit and garnishment proceedings in the Municipal Court of Chicago, Illinois, which lien is prior and superior to the claim of homestead exemption of Sanders.

(c) A decree should be entered directing the clerk to pay over to Armour Fertilizer Works the funds on deposit with said clerk after deducting the amount allowed to plaintiffs as attorneys' fees for filing these bills, which sum is to be credited by Armour Fertilizer Works upon the indebtedness due it by W. D. Sanders.

Respectfully submitted,

CANTEY, HANGER & MCMAHON,
Fort Worth, Texas,
*Attorneys for Armour Fertilizer Works.*

Endorsed:

In the United States District Court for the Eastern District of Texas, Texarkana Division. Consolidated. No. 75 in Equity. National Fire Insurance Company vs. W. D. Sanders, et al. No. 76 in Equity. Hartford Fire Insurance Company vs. W. D. Sanders, et al. Defendant Armour Fertilizer Works' Exceptions to and Motion for Amplification and Changes in Findings of Fact and Conclusions of Law. Filed on 30th day of June, 1932. F. A. King, Clerk. By ..... Deputy.

## Decree of August 6, 1932.

*In the District Court of the United States for the Eastern District of Texas, Texarkana Division.*

*No. 75 in Equity.*

*National Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

DECREE.

These causes having heretofore been consolidated came on to be further heard at this term and were argued by counsel and thereupon on consideration thereof, it was ordered, adjudged and decreed as follows:

That the defendant W. D. Sanders is entitled to the fund impounded in court by both plaintiffs in this consolidated cause.

That the intervenor Mrs. W. D. Sanders has no right, title or interest in and to any part of said fund and her petition of intervention is hereby dismissed and the costs incurred by her in connection therewith are taxed against her.

The defendant Armour Fertilizer Works is not entitled to any part of the funds deposited herein by either plaintiff.

It is further ordered that out of the funds on deposit herein the clerk pay to the plaintiffs costs heretofore allowed plaintiffs in the sum of three hundred and fifty-three and 75/100 dollars ($353.75), and at-

torneys' fees heretofore allowed plaintiff in the sum of six hundred dollars ($600.00); that the balance of said funds be paid by the clerk to the defendant W. D. Sanders.

It is further ordered that the costs other than those taxed against Mrs. W. D. Sanders be taxed against the defendant Armour Fertilizer Works including three hundred and fifty-three and 75/100 dollars ($353.75) hereinabove referred to as having been allowed plaintiffs.

It is further ordered that these cases be consolidated for the purpose of appeal and for all other purposes.

The defendant W. D. Sanders excepts to the order of the court permitting attorneys' fees allowed plaintiffs to be paid out of the funds on deposit herein, without the allowance to him of a personal judgment against defendant Armour Fertilizer Works in such amount.

Defendant Armour Fertilizer Works in open court excepts to all of said decree.

Dated this the 6th day of August, 1932.

RANDOLPH BRYANT,
*Judge.*

Endorsed:

In the District Court of the United States for the Eastern District of Texas, Texarkana Division. Consolidated. No. 75 in Equity. National Fire Insurance Company vs. W. D. Sanders, et al. No. 76 in Equity. Hartford Fire Insurance Company vs. W. D. Sanders, et al. Decree. Filed Aug. 6th, 1932. F. A. King, Clerk U. S. Court. By F. Z. Edwards, Jr., Deputy.

## Armour Fertilizer Works' Petition for Appeal.

*In the District Court of the United States for the Eastern District of Texas, at Texarkana.*

*Consolidated Case.*

*No. 75 in Equity.*

*National Fire Insurance Company,*

vs.

*W. D. Sanders, et al.;*

*No. 76 in Equity.*

*Hartford Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

PETITION FOR APPEAL.

Now comes Armour Fertilizer Works, defendant in bills of interpleader brought by National Fire Insurance Company and Hartford Fire Insurance Company in the above styled and numbered consolidated cause against this defendant and against W. D. Sanders, and feeling aggrieved by the decree rendered in said consolidated cause on September 14, 1931, and overruling this defendant's petition for a rehearing as to such decree on July 15, 1932, and feeling aggrieved at the final decree rendered in said consolidated cause on August 6, 1932, does hereby pray that an appeal be allowed from said decree sustaining said bill of interpleader and the order overruling this defendant's petition for rehearing as to such decree, and from all of that part of the final decree of August 6, 1932, except that part of said last mentioned decree wherein it was ordered, adjudged and decreed that the

intervener Mrs. W. D. Sanders has no right, title or interest in and to any part of said fund and dismissing her intervention and taxing the costs incurred in connection with said intervention against her, to the United States Circuit Court of Appeals for the Fifth Circuit, at New Orleans, Louisiana.

Your petitioner further prays that the proper order touching the security to be required of it to prosecute its appeal be made and desiring to supersede the execution of the decree or any of its provisions, petitioner here tenders bond in such amount as the court may require for such purpose, and prays that with the allowance of said appeal a supersedeas be issued by this Honorable Court.

In connection with this petition, petitioner hereby presents its assignments of error.

Wherefore petitioner prays that said appeal be allowed as prayed for and the amount of supersedeas bond required of it be fixed.

CANTEY, HANGER & McMAHON,
ALFRED McKNIGHT,
WARREN SCARBOROUGH,

*Attorneys for Defendant Armour Fertilizer Works.*

Endorsed:

In the United States District Court for the Eastern District of Texas, at Texarkana. Consolidated Case. No. 75 in Equity. National Fire Insurance Company vs. W. D. Sanders et al. No. 76 in Equity. Hartford Fire Insurance Company vs. W. D. Sanders et al. Defendant Armour Fertilizer Works' Petition for Appeal. Filed on 6th day of Oct. 1932. F. A. King, Clerk. By . Deputy.

## Notice of Appeal by Armour Fertilizer Works.

*In the District Court of the United States for the Eastern District of Texas, at Texarkana.*

*Consolidated Case.*

*No. 75 in Equity.*

*National Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

NOTICE OF APPEAL.

To National Fire Insurance Company and Hartford Fire Insurance Company or Their Attorneys, Messrs. Thompson, Knight, Baker and Harris, W. D. Sanders, or Alvin H. Lane, His Attorney, Mrs. W. D. Sanders or Her Attorneys, Messrs. Rodgers and Rodgers:

Notice is hereby given you that the defendant, Armour Fertilizer Works, appeals from the decree entered in the above consolidated cause on September 14, 1931, and the order of the court overruling defendant's petition for rehearing to such decree, dated July 15, 1932, and from the decree of August 6, 1932, except that part thereof decreeing that Mrs. W. D. Sanders has no right, title or interest in and to any part of the fund in question and dismissing her petition of intervention and taxing the costs incurred by her in connection therewith against her, to the United States

Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana.

Executed this 6th day of October, 1932.

ARMOUR FERTILIZER WORKS,
By CANTEY, HANGER & McMAHON,
*Attorneys of Record.*

We, the undersigned, hereby waive issuance and service of the above notice of appeal, and do hereby acknowledge service of said notice upon us respectively.

Executed this the 30th day of September, 1932.

NATIONAL FIRE INSURANCE COMPANY,
By WILL C. THOMPSON,
*Attorney of Record.*

HARTFORD FIRE INSURANCE COMPANY,
By WILL C. THOMPSON,
*Attorney of Record.*

W. D. SANDERS,
By RODGERS & RODGERS,
WINFREY & LANE,
By ALVIN H. LANE,
*Attorneys of Record.*

MRS. W. D. SANDERS,
By RODGERS & RODGERS,
WINFREY & LANE,
By ALVIN H. LANE,
*Attorneys of Record.*

Endorsed:

In the United States District Court for the Eastern District of Texas, at Texarkana. Consolidated Case. No. 75 in Equity. National Fire Insurance Company vs. W. D. Sanders, et al. No. 76 in Equity. Hartford Fire Insurance Company vs. W. D. Sanders, et al. Notice of Appeal by Armour Fertilizer Works. Filed on 6th day of Oct., 1932. F. A. King, Clerk. By ..... Deputy.

## Defendant Armour Fertilizer Works' Assignments of Error.

*In the District Court of the United States for the Eastern District of Texas, at Texarkana.*

*Consolidated Case.*

*No. 75 in Equity.*

*National Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

ASSIGNMENTS OF ERROR.

Now comes Armour Fertilizer Works and files the following assignments of error upon which it will rely upon the prosecution of its appeal in the above styled and numbered cause:

1.

The District Court erred in overruling the motion of the defendant Armour Fertilizer Works filed herein by special appearance on July 2, 1928, praying that the subpoena served upon it in the State of Illinois, together with the order entered by the court to show why an injunction should not be granted, be in all things vacated, quashed, set aside and held for naught, because the Act of Congress under which this suit was

instituted, to-wit, Title 28, Section 43, paragraph 26, U. S. C. A., including the amendment of said Act of May 8, 1926, 44 Statutes 416, is in violation of the Constitution of the United States for the reasons more particularly set out in said motion.

2.

The District Court erred in its decree and order of September 14, 1931, in overruling the motion of the defendant Armour Fertilizer Works filed herein on September 3, 1928, to dismiss said bills of interpleader, because it appeared that the funds tendered into court by the plaintiffs had theretofore been impounded by the process of the Municipal Court of Chicago, Illinois, and that such funds could not therefore be made the basis of this court's acquiring jurisdiction of this proceeding to adjudicate the rights, claims and liens of this defendant in and to said funds.

3.

The District Court erred in its decree and order of September 14, 1931, in overruling the motion of the defendant Armour Fertilizer Works to dismiss the bills of interpleader, because said bills did not present facts entitling plaintiffs to maintain interpleader suits in that it appeared that plaintiffs had an adequate remedy at law and that the judgment of the Municipal Court of Chicago, Illinois, in the suit of Armour Fertilizer Works against W. D. Sanders would have afforded

plaintiffs a complete defense to any suit subsequently brought against plaintiffs by W. D. Sanders.

4.

The District Court erred in overruling the motion of the defendant Armour Fertilizer Works to dismiss said bills of interpleader, because it appeared that the Municipal Court of Chicago, Illinois, first acquired jurisdiction of the funds and of the controversy presented by said bills, and the jurisdiction having attached first in that court, this court should not have entertained jurisdiction over said bills of interpleader.

5.

The District Court erred in its order of September 14, 1931, in sustaining and in not dismissing said bills of interpleader.

6.

The District Court erred in its order of July 15, 1932, in overruling and in not granting the defendant Armour Fertilizer Works' petition for a rehearing upon the order of September 14, 1931.

7.

The District Court erred in its decree of August 6, 1932, in holding that the funds tendered into court by the plaintiffs belonged to W. D. Sanders and were not subject to the lien of defendant Armour Fertilizer Works acquired in the suit and proceedings in the Municipal Court of Chicago.

8.

The District Court erred in its order of July 2, 1928, in enjoining and restraining Armour Fertilizer Works from prosecuting or attempting to prosecute the suit which it had theretofore instituted in the Municipal Court of Chicago pending the further orders of said United States District Court.

9.

The District Court erred in holding that the defendant Armour Fertilizer Works is not entitled to any part of the funds deposited in court by either of the plaintiffs.

10.

The District Court erred in holding and concluding as a matter of law that the effect of the garnishment proceedings had within the State of Illinois on behalf of Armour Fertilizer Works did not prior to final judgment in that jurisdiction create any lien against the funds of the debtor, and did not subject such funds to collection for the benefit of the attaching creditor absent a final judgment in the garnishment proceedings, because said Illinois proceedings did create a lien, and the holding of the court to the contrary fails to give and afford to the proceedings in the Illinois court the full faith and credit to which said proceedings are entitled under the Constitution of the United States.

11.

The District Court erred in not holding that W. D. Sanders had abandoned said property as a homestead prior to the fire and prior to the institution of the proceedings in the Illinois court.

12.

The District Court erred in overruling and in not sustaining Armour Fertilizer Works' motion to dismiss the bills of interpleader because it appeared that Armour Fertilizer Works and W. D. Sanders were not adverse parties in such way and to such an extent as to authorize plaintiffs to maintain a bill of interpleader.

13.

The District Court erred in overruling the motion of Armour Fertilizer Works for additional and different findings of fact and conclusions of law.

14.

The District Court erred in not giving to the judgments and proceedings in the Illinois suit the same force and effect which such proceedings had and were entitled to in the State of Illinois, and in holding that Armour Fertilizer Works did not acquire by such proceedings a lien superior to any homestead claim of the defendant, W. D. Sanders, and failed to give such Illinois proceedings the full faith and credit to which they were and are entitled under the Constitution of the United States.

15.

The District Court erred in its decree of August 6, 1932, in taxing the costs against Armour Fertilizer Works and in not ordering all of said costs paid out of the funds deposited into court.

16.

The court erred in not rendering a decree ordering the clerk to pay over said funds to the defendant Armour Fertilizer Works to be credited by it on its debt against W. D. Sanders.

Wherefore, Armour Fertilizer Works, defendant in said consolidated interpleader suits, prays that the orders and decrees herein appealed from be reversed, and that the said United States District Court for the Eastern District of Texas, Texarkana Division, be ordered to enter a decree reversing said prior decrees and in favor of this defendant.

CANTEY, HANGER & MCMAHON,
ALFRED MCKNIGHT,
WARREN SCARBOROUGH,
*Attorneys for Defendant Armour Fertilizer Works.*

Endorsed:

In the United States District Court for the Eastern District of Texas, at Texarkana. Consolidated Case. No. 75 in Equity. National Fire Insurance Company vs. W. D. Sanders et al. No. 76 in Equity. Hartford Fire Insurance Company vs. W. D. Sanders et al. Assignments of Error of Defendant Armour Fertilizer Works. Filed on 6th day of Oct., 1932. F. A. King, Clerk. By ..... Deputy.

## Order Allowing Appeal and Fixing Bond.

*In the District Court of the United States for the Eastern District of Texas, at Texarkana.*

*Consolidated Case.*

*No. 75 in Equity.*

*National Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

ORDER ALLOWING APPEAL AND FIXING BOND.

On this the 6th day of October, 1932, came on to be heard the petition of Armour Fertilizer Works for an appeal in the above entitled consolidated cause, and for a supersedeas during the pendency of the appeal of that part of the decree of August 6, 1932, from which an appeal is taken, and it appearing to the court that said appeal should be allowed,

It is ordered that said appeal be allowed and that the execution of said decree be suspended during the pendency of said appeal, upon condition that Armour Fertilizer Works makes and files a supersedeas bond and cost bond with good and sufficient

surety in the sum of $3,000.00, conditioned as required by law.

RANDOLPH BRYANT,
*Judge.*

Endorsed:

In the United States District Court for the Eastern District of Texas, at Texarkana. Consolidated Case. No. 75 in Equity. National Fire Insurance Company vs. W. D. Sanders, et al. No. 76 in Equity. Hartford Fire Insurance Company vs. W. D. Sanders, et al. Order Allowing Appeal and Fixing Bond of Armour Fertilizer Works. Filed on 6th day of Oct., 1932. F. A. King, Clerk. By ....., Deputy.

**Waiver of Citation of Appeal.**

*In the District Court of the United States for the Eastern District of Texas, at Texarkana.*

*Consolidated Case.*

*No. 75 in Equity.*

*National Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company,*

vs.

*W. D. Sanders, et al.*

WAIVER OF CITATION OF APPEAL.

We, the undersigned, National Fire Insurance Company, Hartford Fire Insurance Company, W. D. Sanders, and Mrs. W. D. Sanders, each for himself,

hereby waive issuance and service of citation and notice of appeal in the above entitled and numbered consolidated cause, and each hereby enters general appearance in the Circuit Court of Appeals of the United States for the Fifth Circuit at New Orleans, Louisiana, in the appeal of the above entitled and numbered consolidated cause, without prejudice to the insurance companies' right to contend that order sustaining interpleader is final.

Executed this 30 day of September, 1932.

NATIONAL FIRE INSURANCE COMPANY,
By WILL C. THOMPSON,
*Attorney of Record.*

HARTFORD FIRE INSURANCE COMPANY,
By WILL C. THOMPSON,
*Attorney of Record.*

W. D. SANDERS,
By RODGERS & RODGERS,
WINFREY & LANE,
By ALVIN H. LANE,
*Attorneys of Record.*

MRS. W. D. SANDERS,
By RODGERS & RODGERS,
WINFREY & LANE,
By ALVIN H. LANE,
*Attorneys of Record.*

Endorsed:

In the United States District Court for the Eastern District of Texas, at Texarkana. Consolidated Case. No. 75 in Equity. National Fire Insurance Company vs. W. D. Sanders, et al. No. 76 in Equity. Hartford Fire Insurance Company vs. W. D. Sanders, et al. Waiver of Citation of Appeal. Filed on 6th day of Oct., 1932. F. A. King, Clerk. By Deputy.

## Cost and Supersedeas Bond.

*In the District Court of the United States for the Eastern District of Texas, at Texarkana.*

*Consolidated Case.*

*No. 75 in Equity.*

*National Fire Insurance Company,*

vs.

*W. D. Sanders et al.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company.*

vs.

*W. D. Sanders et al.*

Know All Men by These Presents:

That we, Armour Fertilizer Works, defendant in the above entitled and numbered consolidated interpleader suits, as principal, and Maryland Casualty Company, as surety, are held and firmly bound unto W. D. Sanders, Mrs. W. D. Sanders, National Fire Insurance Company, and Hartford Fire Insurance Company, defendant, intervener, and plaintiffs, respectively, in the consolidated suits in the sum of three thousand dollars ($3,000.00), to be paid unto the said W. D. Sanders, Mrs. W. D. Sanders, National Fire Insurance Company, and Hartford Fire Insurance Company, for the payment of which well and truly to be made we bind ourselves and each of us, our successors and assigns jointly and severally by these presents.

Whereas, the above named Armour Fertilizer Works has prosecuted an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, at New Orleans, Louisiana, to reverse the judgment and decree rendered in the above entitled consolidated suit by the

judge of the District Court of the United States for the Eastern District of Texas, Texarkana Division; and

Whereas, in the order allowing said appeal said United States District Judge ordered that upon the giving of a bond in the sum above indicated by Armour Fertilizer Works that the execution of said decree of the court be suspended pending a final determination of said appeal.

Now, therefore, the condition of this obligation is such that if the above named Armour Fertilizer Works shall prosecute said appeal to effect and answer such damages and costs if it fail to make said appeal good, then this obligation shall be null and void; otherwise the same shall be and remain in full force and effect.

Signed and sealed with our seals this 6th day of October, 1932.

ARMOUR FERTILIZER WORKS,
Principal,
By CANTEY, HANGER & McMAHON,
By WARREN SCARBOROUGH,
*Attorneys of Record.*

(Seal) MARYLAND CASUALTY COMPANY,
Surety,
By M. J. MILLER,
*Attorney in Fact.*

Approved this the 6th day of October, A. D. 1932.
By RANDOLPH BRYANT.

Endorsed:

In the United States District Court for the Eastern District of Texas, at Texarkana. Consolidated Case. No. 75 in Equity. National Fire Insurance Company vs. W. D. Sanders. No. 76 in Equity. Hartford Fire Insurance Company vs. W. D. Sanders. Appeal Bond of Armour Fertilizer Works. Filed on 6th day of Oct., 1932. F. A. King, Clerk. By , Deputy.

## Praecipe for Transcript.

*In the District Court of the United States for the Eastern District of Texas, at Texarkana.*

*Consolidated Case.*

*No. 75 in Equity.*

*National Fire Insurance Company*

vs.

*W. D. Sanders, et al.*

*No. 76 in Equity.*

*Hartford Fire Insurance Company*

vs.

*W. D. Sanders, et al.*

PRAECIPE.

The clerk of this court is hereby directed to prepare and certify a transcript of the record in the above entitled consolidated cause, for use in the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, by including the following:

1. The petition filed by the National Fire Insurance Company in Cause No. 75 in Equity on June 12, 1928.

2. The petition filed by the Hartford Fire Insurance Company in Cause No. 76 in Equity on June 12, 1928.

3. Answer of Armour Fertilizer Works constituting a special appearance for the purpose of objecting to the jurisdiction of the court in Cause No. 75 filed on July 2, 1928.

4. Answer of Armour Fertilizer Works constituting a special appearance for the purpose of objecting to the jurisdiction of the court in Cause No. 76 filed on July 2, 1928.

5. Answer of defendant Armour Fertilizer Works in Cause No. 75, filed on September 3, 1928.

6. Answer of defendant Armour Fertilizer Works in Cause No. 76, filed on September 3, 1928.

7. Answer and petition of W. D. Sanders filed in Cause No. 75 on July 2, 1928.

8. Answer and petition of W. D. Sanders filed in Cause No. 76 on July 2, 1928.

* * * * * * *

11. Plaintiff's supplemental bill of interpleader in Cause No. 75 filed August 22, 1929.

12. Plaintiff's supplemental bill of interpleader in Cause No. 76 filed August 22, 1929.

13. Judgment and order of injunction of July 2, 1928, in Cause No. 75.

14. Judgment and order of injunction of July 2, 1928, in Cause No. 76.

15. Order and judgment of September 14, 1931, sustaining bill of interpleader.

16. Petition for rehearing of defendant Armour Fertilizer Works to the order of September 14, 1931.

17. The order of July 15, 1932, overruling defendant Armour Fertilizer Works' petition for rehearing.

18. Statement of the evidence.

19. Findings of fact and conclusions of law made and entered by the court.

20. Armour Fertilizer Works' objections and exceptions to the findings of fact and conclusions of law and motion for additional findings of fact and conclusions of law.

21. Decree of August 6, 1932.

22. Armour Fertilizer Works' petition for appeal.

23. Waiver of notice of appeal.

24. Defendant Armour Fertilizer Works' assignments of error.

25. Order allowing appeal.

26. Waiver of citation of appeal.

27. Cost and supersedeas bond.

28. Court's opinion, if any.

29. Praecipe.

30. Clerk's certificate.

NATIONAL FIRE INSURANCE COMPANY
By WILL C. THOMPSON,
*Attorney of Record*

HARTFORD FIRE INSURANCE COMPANY
By WILL C. THOMPSON,
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W. D. SANDERS,
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MRS. W. D. SANDERS,
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WINFREY & LANE,
By ALVIN H. LANE,
*Attorneys of Record*

ARMOUR FERTILIZER WORKS,
By CANTEY, HANGER & MCMAHON,
*Attorneys of Record*

Endorsed:

In the United States District Court for the Eastern District of Texas, at Texarkana. Consolidated Case. No. 75 in Equity. National Fire Insurance Company vs. W. D. Sanders, et al. No. 76 in Equity. Hartford Fire Insurance Company vs. W. D. Sanders, et al. Praecipe. Filed on 6th day of Oct., 1932. F. A. King, Clerk. By ....., Deputy.

## Clerk's Certificate.

I, F. A. King, Clerk of the District Court of the United States for the Eastern District of Texas, in the Fifth Circuit, do hereby certify that the above and foregoing is a full, true and correct transcript of the record, bill of exceptions, notice of appeal, assignments of error, and all the proceedings in causes numbers 75 and 76 in equity, consolidated, wherein the National Fire Insurance Company is plaintiff and W. D. Sanders, *et al.*, are defendants, and the Hartford Fire Insurance Company is plaintiff and W. D. Sanders, *et al.*, are defendants, as fully as same remain on file and of record in my office at Texarkana, Texas.

Witness my hand officially and the seal of said court, at Texarkana, Texas, this the 25th day of October, A. D. 1932.

F. A. King,
Clerk, United States District Court.
Eastern District of Texas.

By , Deputy.

That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

No. 6796

ARMOUR FERTILIZER WORKS

versus

W. D. SANDERS et al.

ARGUMENT AND SUBMISSION

Extract from the Minutes of January 17, 1933

On this day this cause was called, and, after argument by Walter C. Kirk, Esq., and Alfred McKnight, Esq., for appellant, and Alvin H. Lane, Esq., for appellee, was submitted to the Court.

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 6796

ARMOUR FERTILIZER WORKS, Appellant,

versus

W. D. SANDERS et al., Appellees

Appeal from the District Court of the United States for the Eastern District of Texas

(March 10, 1933)

Before Bryan, Sibley and Hutcheson, Circuit Judges

OPINION OF THE COURT—Filed March 10, 1933

SIBLEY, Circuit Judge:

Two insurance corporations of Connecticut owed W. D. Sanders, a citizen of Texas, insurance money for loss by

fire of property in Texas which had constituted part of
homestead. They were served in Illinois as garnishees
proceedings in foreign attachment brought there by
mour Fertilizer Works, a corporation of Illinois, agai
Sanders on notes held against him which contained a w
ver of all homestead and exemption rights. The garnish
by amended answers admitted liability, but set up that
money was claimed by Sanders to be his homestead and
liable to garnishment. Judgment by default after the p
lished notice required by Illinois law was rendered agai
Sanders that the attachment be sustained and that Arm
Fertilizer Works recover of him its debt fixed at $7,589
and costs, and that execution issue. Before trial of
answers of the garnishees they, claiming to be mere sta
holders, filed under 28 U. S. C. A. § 41 (26) as rewritten
Act of May 8, 1926, an interpleader proceeding in the I
trict Court in Texas where Sanders was domiciled, nam
him and Armour Fertilizer Works as the adverse claima
paid the money into court and obtained an interlocutory
junction against further proceedings in Illinois. A
missal at the instance of Armour Fertilizer Works of
bill for interpleader was reversed on appeal, 38 Fed. (
212, this court saying:

"The District Court has jurisdiction to grant relief
appellants, and to determine which of the claimants is
titled to the fund deposited in court, neither of which p
ties can lose anything by the filing of the bill. If a lien
tached to the funds by virtue of the garnishment it follow
them into the register of the court, and may be given
force and effect. On the other hand, if the exempt
claimed by Sanders is superior, judgment may be awar
him."

Upon the trial a decree was given in favor of Sand
and Armour Fertilizer Works appeals.

The appellant renewed its motion to dismiss, mak
the same contentions that were overruled on the for
appeal. The questions then decided stand as the law
the case. Richardson vs. Ainsa, 218 U. S. 289; Ames
Quimby, 106 U. S. 342. If within our power, we have
disposition to review them. Wolf Packing Co. vs. Court
Industrial Relations, 267 U. S. 552; Messenger vs. And

son, 225 U. S. 436. But a contention not before presented is that the Act of March 8, 1926, as here applied is unconstitutional because invading the reserved rights of the State of Illinois to try cases in its courts, and because denying full faith and credit to the proceedings had there. The first objection is answered by the grant of judicial power in Art. 3 of the Constitution. Suits for interpleader in which actions in other courts are enjoined where familiar to equity when the Constitution was adopted and are one of the forms of controversy to which, when arising between citizens of different States, the Federal judicial power was extended. The Act enlarges the processes of the District Court to cover a broad territory, but otherwise authorizes only an ordinary form of equitable relief. The second objection goes not to the Act itself but to the decision of this controversy. The District Court of course is bound on an interpleader to give full faith and credit to the garnishment proceedings in Illinois. Cooper vs. Newell, 173 U. S. 567. What that full credit is and whether it has been afforded, it is our duty to determine on this appeal.

The statutes of Illinois permit suit by the attachment of a non-resident's property, including a garnishment of debts due him, if sufficient leviable property is not found. The defendant is to be served personally if possible, and if not, by four weeks' published notice, a copy being mailed to his last known address. If he does not appear, and is served only by publication, default judgment may be entered on the plaintiff's affidavit of the amount due and execution issued but only against the property or debts attached only. All judgments against the same defendant rendered at the same term, whether on attachment or summons, share pro rata in the fund raised. It is stipulated that the proceedings here in question were according to the statutes, and that by the settled law of Illinois on a trial of the answers to the garnishment the claim of exemption of the insurance would have been overruled. It is held generally that exemption laws are a part of the remedy of the forum, and have no force beyond the bounds of the State enacting them. Chicago & Rock Island Ry. vs. Sturm, 174 U. S. at p. 717; Bynum vs. Johnson, 222 Fed. 659; Bristol vs. Brent, 38 Utah 58; Penn R. R. Co. vs. Rogers, 52 W. Va. 450; Person vs. Williams-Echols Co., 113 Ark. 467. But for the injunction of the Federal

Court the State Court would have compelled the payment of the money into court to satisfy such creditors as might have obtained judgments against Sanders. We cannot agree that because final judgment had not gone against the garnishees the proceeding was due no faith and credit. The full and credit clause of the Constitution speaks of judicial proceedings, not judgments merely. By a valid exercise of jurisdiction over the persons of the garnishees there present, the Illinois Court was in process of compelling payment of the insurance into court, and had on service sufficient to that end adjudged Sanders' indebtedness to Armour Fertilizer Works and the sufficiency of the attachment process. There had arisen as against him a right to detain the debt as a prospective fund and to apply it to the demands of plaintiff and other creditors, which may aptly be termed a lien. It dates from the service of the writ of garnishment. Though inchoate and subject to defeat if final judgment fails either as to the main debtor or the garnishee, it is a substantial legal right. National Surety Co. vs. Medlock, 2 Ga. App. 665; Florida E. C. R. R. vs. Consolidated Engineering Co., 95 Fla. 99. It is treated as a lien obtained by operation of law under the Bankruptcy Act, and stands or falls according as the service of garnishment was more or less than four months before bankruptcy, without any reference to the date of final judgment. Anderson vs. Ashford, 44 Ga. App. 177; Globe & Rutgers Ins. Co. vs. Brown, 52 Fed. (2d) 164; Cohn vs. Drennon, 19 Fed. (2d) 642; In re Phillips & Co., 224 Fed. 628; In re Maher, 169 Fed. 997. The garnishment is in fact a seizure at law of equitable assets not otherwise subject to execution for administration to all creditors who establish their debts in the forum. It is comparable to the seizure of assets under a creditor's bill, where it is settled that such seizure establishes a lien, inchoate and subject to like defeats as is a garnishment until final decree, but good against a bankruptcy begun after four months. Metcalfe vs. Barker, 187 U. S. 165; Blair vs. Brailey, 221 Fed. 1. In an Illinois case, National Bank of America vs. Indiana Banking Co., 114 Ill. 483, where after service of garnishment but before judgment against the garnishees the debt was partially assigned

by checks drawn against it and it became necessary to determine when the garnishment lien arose, the court said:

"The principles of former decisions have been recently restated by this court in Reeve vs. Smith, 113 Ill. 47, where it was said in construing the 37th section of the Attachment Act that property real and personal attached and funds in the hands of a garnishee are placed on the same footing; that is, when attached, such property or funds are appropriated from that time to the payment of a certain class of judgment creditors specifically enumerated. From the time of the levy or service of the writ the property or funds are held by virtue of the statute for the benefit of all creditors of the attachment debtor who shall obtain judgments against him within the time and in the manner specified in the statute. It is the whole property or funds attached, and not any specific part or portion that is held until it shall be ascertained what creditors are entitled to share in the proceeds."

In National Fire Ins. Co. vs. Chambers, 53 N. J. Eq. 468, Justice Pitney, then Vice-Chancellor, examined a garnishment lien before final judgment which had been obtained in Pennsylvania, a State not the domicile of the garnishee or of the main debtor as in the case at bar, and upheld the lien in an interpleader in New Jersey as against an assignment of the garnished debt made subsequent to the service of garnishment. The case is cited with approval in Chicago & Rock Island Ry. vs. Sturm, 174 U. S. 710. In the Sturm case the garnishment had issued in Iowa, before the main debtor sued the garnishee in Kansas. Final judgment had not been rendered against the garnishee. The garnishment was not held to be without effect in Kansas for lack of a final judgment, but it was adjudged that full faith and credit required that it be held a good ground either to postpone the trial or to abate the suit of the main debtor in Kansas, because a good defense if the garnishee should be finally held liable in Iowa. Again in King vs. Cross, 175 U. S. 396, the priority of a garnishment served but not gone to judgment in one State was upheld against proceedings on an assignment of the garnished debt in another State. In the two cases last cited the garnishment was in the State of the garnishee's domicile, but that equally effective jurisdiction over the debt may be obtained by a

lawful personal service on the garnishee elsewhere, whether an individual or a corporation, is established in Harris vs. Balk, 198 U. S. 215, and Louisville & Nashville R. R. Co. vs. Deer, 200 U. S. 176. Turning to the older cases in Wallace vs. McConnell, 13 Pet, 135, a suit upon a note was filed in the Federal Court and afterwards the debt was garnished in a State court, the garnishee admitting indebtedness but the case not having reached final judgment. The pending garnishment was pleaded in the Federal Court and the plea overruled. The insufficiency of it was upheld in the Supreme Court on the sole ground that the jurisdiction of the Federal Court over the debt had attached first. It was said, page 150:

"If the attachment had been conducted to a conclusion and the money recovered of the defendant before the commencement of the present suit, there can be no doubt that it might have been set up as a payment upon the note in question. And if the defendant would have been protected *pro tanto* under a *recovery* had by virtue of the attachment and could have pleaded such recovery *in bar* the same principle would support a plea *in abatement* of an attachment *pending prior* to the commencement of the present suit. The attachment of the debt in such case in the hands of the defendant would *fix it there* in favor of the attaching creditor and the defendant could not afterwards pay it over to the plaintiff. The attaching creditor would in such case *acquire a lien* upon the debt binding upon the defendant and which the courts of other governments, if they recognize such proceedings at all, would not fail to regard. If this doctrine be well founded, the *priority of suit* will determine the right."

It was so held, citing among other cases Embree vs. Howard, 5 Johns. 101. In that case Chief Justice Kent maintained that the first garnishment served fixed a lien which the courts of other states were bound to respect. In Mooney vs. Buford Mfg. Co. (1896), 72 Fed. 32, Justice Woods for the Court said:

"It is notice to the debtor (garnishee) that gives the plaintiff in garnishment a *lien upon the debt* as effectually as upon like notice by publication it may dispose of a chattel seized in attachment. * * * 'Full faith and credit

shall be given in each State to the public acts, records and judicial proceedings of every other State.' The proceedings and judgments of the Courts of the United States are entitled to equal respect, and it follows that a proceeding in garnishment *begun* in any court of competent jurisdiction against a corporation doing business and subject to process in two or more States would be entitled to precedence of any suit for the same cause *commenced later* in another State or district. The supposed inconvenience of different suits in different jurisdictions and danger of debtors being compelled to discharge the obligation more than once is more imaginary than real. No court can rightfully disregard the *lien upon the debt* which is established by the *service of process in garnishment* upon the debtor.''

The danger of double payment threatened in Lancashire Ins. Co. vs. Corbetts (1897), 165 Ill. 592, and led the Illinois court to refuse a judgment against the garnishee although process of garnishment was first served in Illinois because the first judgment had been gotten by a later garnishing creditor in Wisconsin. The Illinois Court saw no way to prevent the Wisconsin court from enforcing its judgment. The remedy pointed out in Mooney vs. Buford Mfg. Co., supra, in 1896 was upheld as correct in the Sturm case in 1899. The later garnishment in Wisconsin should have been defended by pleading the former one in Illinois as ground for continuance or abatement, carrying the question to the Supreme Court of the United States if necessary. See also Solomon vs. Continental Ins. Co., (Mass.), 158 N. E. 774. Priority of garnishment rather than priority of judgment is the practicable as well as logical test. The impasse resulting from the latter test is illustrated in note to Becker vs. Ill. Cent. R. R., 250 Ill. 40, in L. R. A., N. S. 1155. The difficulty of double judgment does not arise here, the Federal Interpleader Act providing another remedy against it. The Federal cases are controlling and establish that the incomplete garnishment proceeding in Illinois has the effect of a lien and that full faith and credit in other States and in the Federal Courts require that like effect be given it in them.

According to Texas law insurance on burned homestead property stands in its place, and is exempt from garnishment although the homesteader may dispose of it voluntarily as he sees fit. Chase vs. Swayne, 88 Texas 218;

Sorenson vs. City Natl. Bank, 49 S. W. (2d) 718; Russell vs. Hamilton, 174 S. W. 705. There is no limit as to amount unless furnished by the conscience of a court of equity. $60,000.00 of insurance was held exempt in Chase vs. Swayne. The insurance is not really the homestead, nor the proceeds of it, for it is bought by and produced from the premiums paid for it. There is merely a judicial or in some States a statutory exemption of it from seizure to permit if the insured chooses a repair of the damaged homestead. But the exemption has no force outside of Texas. Sanders had before this interpleader was filed only a chose in action against debtors domiciled in Connecticut. He had taken no step to reduce it to possession and to make it property in Texas. It still had its situs for purposes of enforcement where the person of the debtor might be found. Vogel vs. Thiesing, 55 Fed. (2d) 205. The debt was attached first in Illinois, where the Texas exemption from garnishment was without force. This is not a case in which a creditor domiciled in the same State with his debtor seeks to evade the laws of his own State by going into another State to attach an exempt debt. Such a fraud on its own laws by its own citizen the State of his domicile may by injunction prevent. Cole vs. Cunningham, 133 U. S. 107, Moton vs. Hull, 77 Tex. 80. Here the creditor at his own domicile invokes the processes of his own State to subject property within their reach to the payment of an undenied debt, and injunction will not be granted against his doing so. Griffith vs. Langsdale, 13 S. W. 733; Person vs. Williams-Echols Co., 169 S. W. 223. By its statute Illinois now protects against garnishments there the wages of non-resident laborers. Jackson vs. Republic Co., 141 Ill. App. 453. Without such a statute courts have by construction extended their local exemptions as laws of the forum to cover foreign laborers. Mineral Point R. R. Co. vs. Barron, 83 Ill. 365; Wabash R. R. Co. vs. Dougan, 142 Ill. 248; Goodwin vs. Claytor, 137 N. C. 224. Some courts have thought the exemption of wages inhered in the contract of employment and followed the wages wherever they were sought to be recovered, but this idea was rejected in the Sturm case. We have seen no decision in which the effort to protect insurance on a foreign homestead has succeeded. A number of cases refuse such protection. Person vs. Williams-Echols Co., 169 S. W. 22; Roche vs. Rhode Island Ins. Association,

2 Ill. App. 360; American Cent. Ins. Co. vs. Hettler, 46 Ill. App. 416; Sexton vs. Phoenix Ins. Co., 132 N. C. 1. The policy of the State of Illinois as set up in the garnishee's answer is to protect as homestead only $1,000.00 of value. The urban homestead in Texas, Rev. Stats. 1925, Arts. 3832, 3833, exempts besides household and kitchen furniture $5,000.00 of value of bare land, with an unlimited value of buildings thereon for a residence or a business or both. The homesteader here, outside of his business homestead, has sold his residence lot for $2,000.00 and would exempt insurance of nearly $8,000.00 more. It is a stipulated and understandable fact that the courts of Illinois will not aid him to exempt this insurance.

We do not think the filing of the Federal interpleader and the payment thereunder of the money into the District Court in Texas operated to bring it under the dominion of Texas law. The applicant for interpleader often has a choice of forum, and he cannot at his will subject the rights of the contesting claimants to one set of laws rather than another. The purpose of the interpleader statute was to give the stakeholder protection, but in nowise to change the rights of the claimants by its operation. The interpleader is a suit in equity, and equitable principles and procedure are the same throughout the Federal jurisdiction. The court is to weigh the right or title of each claimant under the law of the State in which it arose, and determine which according to equity is the better. The decision should be the same whether the interpleader is filed in Illinois or in Texas. No one's rights are intended to be altered by paying the fund into the court, which as an impartial neutral is to determine them. Vogel vs. Thiesing, 55 Fed. (2d) 205. The garnishment in Illinois was a detention in that State of the insurance debt good there against Sanders' claim of exemption, and the fund now representing it must be held encumbered by the same lien. Full faith and credit so require. Chicago & Rock Island Ry. vs. Sturm, 174 U. S. 170; M. K. & T. Ry. vs. Schwartz, (Tex.), 115 S. W. 275. The enforcement of the lien in Illinois though to the detriment of a Texas exemption we have shown not to be in itself inequitable so as to be enjoined. The Federal injunction for purposes of interpleader ought not to have ulterior consequences. The garnishment lien might by a modification of the Federal injunction be allowed to be perfected by a final judgment

in Illinois, the fund being held to await the decision. See City Natl. Bank vs. Lummus Co., 297 S. W. 563; Peck vs. Jenness, 7 How. 611; Hill vs. Harding, 130 U. S. 699. But since by stipulation judgment there is certain it can be adequately administered at once. We treat the burned property as unabandoned homestead, though there is a contest of the fact. Sanders cannot repair his damaged home with this money for he has sold it. Creditors are favored in the court of conscience. There is no inequity in requiring the payment of a just debt. Compare Cole vs. Young, 24 Kans. 435, by Brewer, J. The foreign garnishment was put ahead of the exemption right in the State which created it in the Sturm case. We think this fund should be applied first to the extinguishment of the judgment rendered against Sanders in the garnishment proceeding and the remainder, if any, paid over to him. The cause is reversed, with direction to enter a decree accordingly.

Reversed and Rendered.

Hutcheson, Circuit Judge, dissents.

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DISSENTING OPINION OF HUTCHESON, CIRCUIT JUDGE—Filed March 22nd, 1933

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 6796

ARMOUR FERTILIZER WORKS, Appellant,

versus

W. D. SANDERS et al., Appellees

Appeal from the District Court of the United States for the Eastern District of Texas

(March 22, 1933)

Before Bryan, Sibley and Hutcheson, Circuit Judges

Dissenting Opinion of Hutcheson, Circuit Judge

HUTCHESON, J., dissenting:

The conclusion of the majority is in effect that an inchoate garnishment proceeding by publication, begun in

Illinois, limits the general jurisdiction of a Federal court in Texas in an interpleader suit, to hear, determine and decree, by compelling it to deny to the head of a Texas family, the homestead exemption which Texas laws guarantee. I feel strongly that the decision, in requiring a Texas court to deprive a Texas family of its homestead exemption to pay a debt incurred and payable in Texas, is harsh and unjust, subversive of the public policy of Texas and its established social order. Because I do, and because I think it plain that the opinion bases and proceeds on premises and reasoning wholly unsound, I am constrained not only to dissent, but to give my reason for doing so.

On the former appeal, 38 Fed. (2) 212, we said that the garnishment proceeding had not vested jurisdiction of any res in Illinois, and that "any judgment to be rendered against the garnishee there would be a personal judgment to be satisfied out of personal property and not out of any particular fund or segregated property." On this appeal the majority takes just the opposite view. They find that there was a res impounded and a lien fixed thereon. On the former appeal we said "The District Court has jurisdiction to determine which of the claimants is entitled to the fund deposited in court, and to award it accordingly." On this appeal the decision of the court is in effect that the District Court had not full jurisdiction of the cause to inquire into the merits of the claim that the proceeds of the policies were exempt and determine accordingly. That the jurisdiction the court had was merely a ministerial and perfunctory one to render the judgment in the interpleader suit which the Illinois court would have rendered if the garnishment had proceeded to judgment there. That, in short, the only effect of the interpleader suit and the injunction against the Illinois proceeding was in substance to transfer it to Texas to be consummated there under the control of the stipulation of the parties that in Illinois the exemption would not be allowed.

The views of the majority, I think, run counter not only to the essential right and justice of this cause, but to the settled rules of law governing matters of this kind. First, as to the justice of the exemption claim.

I oppose *to* the view expressed in the majority opinion that creditors "are favored in the court of conscience" as against those holding exemptions, the settled law that a

court of equity, having jurisdiction of the parties, will restrain a creditor from resorting to the courts of another state in order to defeat an exemption allowed by the laws of the state where the debt is created and is payable, as well as when suit is brought to defeat any other policy of the state, and that the full faith and credit clause does not prevent its doing so. Moton vs. Hull, 133 U. S. 107; Cole vs. Cunningham, 133 U. S. 107; Wilser vs. Wilser, 156 N. W. 272; K. C. vs. McCardle, 232 S. W. 468; Weaver vs. A. G. S., 76 So. 365. The notes executed by Sanders were Texas obligations. They were signed in Texas, they were payable there. They were captioned "State of Texas, DeKalb, Texas, May 1, 1926"; they provided "This note shall be payable at Stockyards National Bank, Fort Worth, Tarrant County, Texas." There is no doubt that if a Texas court could have obtained jurisdiction of Armour it would have enjoined his prosecution of the suit in Illinois.

In the light of these authorities, to say as the majority does, that a court of conscience sitting in Texas having jurisdiction of a creditor who has undertaken shrewdly to circumvent its exemption laws so as to compel a Texas debtor to pay a Texas obligation out of exempted proceeds of insurance policies on his home, is, in my opinion, to incorrectly state the law.

To the view implicit in the opinion, that the Texas homestead exemption laws are too liberal, and because too liberal the Federal courts justly deny them effect, I oppose not only the observation that it is for Texas alone to determine the level of domestic peace and security which the genius of the State requires and to fix its exemptions accordingly, but the observation that "It has always been the policy of Congress, both in general legislation and in bankrupt acts, to recognize and give effect to state exemption laws." Holden vs. Stratton, 198 U. S. 214. In that case it was said:

"This was cogently pointed out by Circuit Judge Caldwell, in delivering the opinion in Steele vs. Buel, 104 Fed. 972, where he said 'From the organization of the Federal courts under the judiciary act of 1789, the law has been that creditors suing in those courts could not subject to execution property of their debtor exempt to him by the law of the State.' * * * The same rule has obtained under the bankrupt acts which have some-

times increased the exemption, but have never lessened or diminished them. An intention on the part of Congress to violate or abolish this wise and uniform rule, observed from the creation of our Federal system should be made to appear by clear and unmistakable language."

To the view announced by the majority that exemptions are matters of local law, having in themselves no extra territorial effect, and that they will not ordinarily be enforced in states other than that of their creation, I oppose the settled policy of substantially all the states to insure, by statute and decision, the exemption from seizure for debt of the home and the proceeds of insurance policies on it (Chase vs. Swayne, 88 Tex. 218; Ketcham vs. Ketcham, 269 Ill. 584) and the modern view that comity requires that exemptions allowed in a state be not defeated by suits brought in another state to avoid them. Reames v. Morrow, 193 Ill. App.; Sawyer Mfg. Co. vs. Fleming, 58 N. W. 226; Strawn vs. First National Bank, 279 S. W. 474; Jackson vs. Republic, 141 Ill. App. 453; Baltimore & Ohio R. R. vs. McDonald, 112 Ill. App. 391.

The majority holding to the confused notions of debt situs advanced in Chicago & Rock Island R. R. vs. Sturm, 174 U. S. 170; King vs. Cross, 175 U. S. 396, as determining jurisdiction in garnishments, exploded in Harris vs. Balk, 198 U. S. 215, treat garnishment proceedings as now in personam, now in rem, and contrary to the universally recognized rule that priority of judgment rather than priority of garnishment controls, seeks to rest upon the universally denied theory that the garnishment impounded a res in Illinois, its conclusion that a lien was fixed there.

Questions of justice and county aside, however, I think that a correct understanding of the nature and effect of garnishment proceedings, the nature and effect of a Federal interpleader suit, and the law governing Federal courts sitting in a state as to the exemptions allowed in that state, make it plain that the District Judge was right, and that the reversal of his judgment was wrong. And first, as to the nature of a proceeding in garnishment.

Garnishment proceedings, though they undoubtedly derive generally from the custom of London (C. & R. I. Ry. vs. Sturm, 174 U. S. 170) are in the United States purely statutory. In each state their nature and results are those which the courts of that state conceive that the statutes

impart to them. Beale, in his very interesting article, "The Exercise of Jurisdiction in Rem to Compel Payment of Debts," 27 H. L. R. 107, shows how far in the United States garnishment proceedings have departed from the custom of London, and how though in the beginning treated as based on the notion that the situs of the debt fixed the place of suit, with varying views as to where that situs was (C. & R. I. Ry. vs. Sturm, 174 U. S. 170; King vs. Cross, 175 U. S. 396) they are now, under the influence of Harris vs. Balk, 198 U. S. 215, and the general current of authority, regarded as suits in personam, the jurisdiction to maintain which is based not at all on theories of situs, but on the power of the court to obtain personal jurisdiction over the garnishee. He shows that the notion that garnishment is an ordinary action in personam, jurisdiction to maintain which exists wherever the garnishee can be served, has entirely superseded the original notion of garnishment as a proceeding based on jurisdiction in rem over a thing. Minor, in his Conflict of Laws, also interestingly discusses these questions of situs and jurisdiction, and of the nature of a garnishment action. He concludes, p. 290, citing Mooney vs. Mfg. Co., 72 Fed. 252, that a garnishment is but a proceeding in personam, while in the courts of Illinois the same rule is definitely laid down. They hold that being a personal action, not the filing of the suit, but the obtaining of final judgment, fixes the rights of the parties. McElwee vs. Wilce, 80 Ill. App. 338; Lancashire Ins. Co. vs. Corbetts, 46 N. E. 631; Becker vs. Ill. Central, 95 N. E. 42. In some courts a garnishment is spoken of as a proceeding quasi in rem. Coign vs. Plaines, 97 Atl. 337. In some as a species of attachment. In others, as a mere personal action at the end of which there is in effect a forced assignment from the original creditor to the garnishing creditor, an action creating no specific lien, but holding the garnishee to a personal liability, depending upon his liability to the principal defendant. Sargent vs. State, 182 N. W. 270. In some, as a proceeding creating no lien, but merely a contingent personal liability to respond to any judgment after it is recovered. Murphy vs. Bjelik, 169 Pac. 521; Rogers vs. Oliver, 205 N. W. 513. In some states it is likened to an equitable trustee proceeding. Weinberg v. Brother, 160 N. E. 403. In others, it is said that a proceeding in garnishment is merely a proceeding

for the purpose of effecting a compulsory assignment of the claim by process of law. Seventy-first St. & Broadway vs. Thomas, 157 Atl. 851.

These different expressions have no absolute, no general significance. They represent the attempt, of each court to set down in its own terms the effect of a garnishment action which is to warn the garnishee not to pay the debt to the principal creditor unless and until directed by judgment to do so. They establish that regardless of the pendency of trustee or garnishment proceedings the principal defendant may at any time commence and prosecute his action, and that no proceedings against the garnishee short of judgment, and no payment made by him before judgment, will protect or release him from the claim of the principal creditor. McIntosh vs. Bronson, 157 Atl. 234. They establish that though the principal defendant may not, after his debtor has been garnished, assign his claim or do any other thing to defeat the garnishment, the proceeding is still only a personal action; it fixes no lien, it protects the garnishee against liability only after judgment, and until it has gone to judgment, it is ineffective as against the rightful claims of the principal creditor that the fund is not garnishable because of the exemption when asserted in a court of competent jurisdiction. They establish that the pendency of a trustee or garnishment proceeding in another jurisdiction is not a ground in bar of local action. That such proceedings do not bar until they come to judgment, and that they do not even operate to stay, except in the interest of the garnished defendant to save him from double liability. Solomon vs. Continental Ins. Co., 158 N. E. 774.

Under these decisions, no lien was fixed by the inchoate proceeding in Illinois. Nothing occurred there except the starting of a personal suit the same as that which Sanders started by filing his claim in the interpleader suit. Under these decisions, since the time of obtaining judgment in, and not the time of filing, personal suits fixes the rights of the parties, the matter stood as between Armour and Sanders in the interpleader suit after they had claimed in it, exactly as it would have stood had Sanders filed his suit in Texas, Armour his in Illinois, and both had been enjoined.

It remains to inquire what kind of jurisdiction the district court exercises in a Federal interpleader suit; that

is, whether it is a full jurisdiction of the parties and the cause, or a limited one, as the majority assert it to be, and if a full jurisdiction, what law should be applied. First, as to the nature of an interpleader suit.

"Interpleader is a type of judicial proceeding admirably fitted to achieve justice in complicated controversies. In order to give full relief to the applicant who seeks interpleader, the court must have the power to enjoin the claimants from prosecuting their claims outside of the interpleader proceedings, for otherwise its decree would not terminate the controversy. Chafee, Interstate Interpleader. Y. L. J. Vol. 33."

Such a suit is not a suit in rem, it is an equitable proceeding in the nature of a bill or peace, for the purpose of avoiding multiplicity of suits, and the possibility of double liability. It enables one having no interest except to protect himself from double liability, against whom harassing and vexatious litigations are, or are about to be brought, to bring into one forum all opposing claimants and compel them to settle there the question which is entitled to the payment each demands. Because, like garnishment, it is a personal suit, and not a suit in rem, personal jurisdiction over the claimants is essential. N. Y. Life Ins. Co. vs. Dunlevy, 241 U. S. 518. That jurisdiction existing however, the court in which the interpleader is filed has full authority to hear and dispose of the claim in accordance with the applicable law. It is perfectly clear, in fact, it is conceded by the majority, that Federal courts sitting in a state ordinarily apply the exemption laws of the state (Holden vs. Stratton, supra) and that ordinarily, if "the decree would have been right in the state of Texas, it is right in the District Court of the United States sitting in the same state." Union Trust Co. vs. Grossman, 245 U. S. 412; Pritchard vs. Norton, 106 U. S. 124.

But it is said by the majority that in Chic. & R. I. Ry. vs. Sturm, 174 U. S. 170, it was held that a garnishment proceeding created a lien, and that courts in the state of the exemption must give effect to the lien so created.

With all due deference, the Sturm case decided no such thing. It was a suit in which a defendant, against whom judgment in garnishment had gone in Iowa, sought to stay the suit of the creditor of the principal defendant in Kansas until the garnishment proceeding could be finally determined. Proceeding in that case upon the erroneous view

that the garnishment in Iowa had seized a debt having a situs there, because the garnishee lived there, it did hold that in order to save the garnishee double liability he was entitled to a stay of the suit of the principal defendant for the debt after judgment had gone in the garnishment suit. It did not hold, the question was not before it, that a Federal court in the state of the exemption having jurisdiction of both the principal creditor and the garnishing creditor in an interpleader suit filed by the garnishee, would be compelled to recognize an inchoate garnishment proceeding in another state, brought there on a Texas obligation to defeat Texas exemption laws, as superior to the exemptions granted by the laws of Texas. It did not hold that a Federal court having complete personal jurisdiction of two claimants, neither of whom had obtained a judgment, would be bound by the full faith and credit clause, to render a judgment on a Texas contract in favor of one of them, who, contrary to the fundamental public policy of the state of Texas had resorted to another state to defeat its exemption laws.

What the majority has done is to give to the Sturm case the effect not only of deciding questions which were not before it, but of laying down a rule which it did not even advert to, a rule contrary to established law, that the full faith and credit clause binds the courts of a state to give effect to inchoate public acts and judicial proceedings of another state, contrary to its established fundamental policies. The majority, in reversing and rendering this cause, has laid down the rule that the bringing of a garnishment suit compels the Federal court in another state in which a bill of interpleader is filed, to deny exemptions allowed by the state in which it sits, contrary to the fundamental policy of that state. The full faith and credit clause of the Constitution does not require such action. Courts have never held that it did. On the contrary, they have held, without varying, that courts of a state do not have to enforce public acts or judicial proceedings, though final in their nature, which are contrary to the public policy of that state, and the jurisdiction has always been recognized to enjoin the prosecution of such suits or actions to obtain the fruits of them. See cases supra, and Rose's notes to 133 U. S. 107.

The true rule is that though the full faith and credit clause does generally require recognition of the public acts and judicial proceedings of another state, it does not require the courts of one state to give effect to personal actions looking to the establishment of a right or charge while those actions are still inchoate. Becker vs. Ill. Central supra. Lancashire Ins. Co. vs. Corbetts, supra. It does not require the courts of one state to exercise their jurisdiction to enforce the public acts or judicial proceedings of another, when those acts or proceedings, if given effect, would result in subverting the public policy of the forum. Bradford Elec. Co. vs. Calpper, 286 U. S. 160.

Because then, Armour's proceeding in Illinois was a mere personal action to obtain a general judgment for moneys, and was not a suit to impound a res or fix a lien or charge upon it, and because that suit had not resulted in a personal judgment enforcible personally, either against Sanders or the garnishee, and because if those proceedings be considered to have given Armour any kind of lien or charge, it would be one available only against persons claiming by subsequent acts under Sanders, not one available in a Texas court to defeat Sanders' exemption claim in subversion of the established policy of that state, I think it plain that when it filed its claim in the interpleader suit that claim took rank behind the claim of Sanders.

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No. 6796

ARMOUR FERTILIZER WORKS

versus

W. D. SANDERS ET AL.

JUDGMENT

Extract from the Minutes of March 10, 1933.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the

said District Court in this cause be, and the same is hereby, reversed with direction to enter a decree in accordance with the opinion of this Court;

It is further ordered, adjudged and decreed that the appellees, W. D. Sanders, and others, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

"Hutcheson, Circuit Judge, dissents."

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PETITION FOR REHEARING—Filed March 27, 1933

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 6796

ARMOUR FERTILIZER WORKS, Appellant,

vs.

W. D. SANDERS ET AL., Appellees

Consolidated Cases

Petition for Rehearing of Appellee W. D. Sanders

To the Honorable Judge of said Court:

Now comes W. D. Sanders, one of the appellees in the above-styled and numbered consolidated cases, and presents this, his petition for re-hearing, and prays the court to set aside the judgment and opinion rendered and filed herein on March 10, 1933, and to grant to this appellee a re-hearing, and upon such re-hearing to affirm the judgment of the District Court of the United States for the Eastern District of Texas. For grounds of such petition, this appellee respectfully shows to the court, as follows:

First Assignment of Error

The court erred in holding that the judicial proceeding instituted by appellant Armour Fertilizer Works in Illinois, which consisted of plaintiff's petition, service

of process upon defendant W. D. Sanders by publication, entry of an interlocutory order of default against Sanders, and the answer of the garnishees in said suit denying any indebtedness to the principal defendant W. D. Sanders, which judicial proceeding, under the laws and practice of that State, merely gave rise to an inchoate and defeasible claim upon the debt sought to be garnished, in an indeterminate amount, so far as said plaintiff was concerned, must be given greater faith and credit in Texas than it was entitled to in Illinois, and must here be honored as a definite and final judgment awarding the entire debt sought to be garnished to the satisfaction of Armour's claim.

Second Assignment of Error

The court erred in announcing as an exception to the rule of law that all matters of procedure, including the remedies of garnishment and exemption, in all characters and classes of actions, are to be governed wholly by the law of the forum, the principle that in interpleader suits the courts of the forum are free to disregard its precedural laws and to follow such precedural law, domestic or foreign, as may appeal to such court as reaching the most equitable result under the circumstances.

Wherefore appellee, W. D. Sanders, respectfully prays that this, his petition for a re-hearing, be granted, and that upon such re-hearing the judgment and opinion of this Honorable Court rendered and filed on March 10, 1933, be set aside, and that in lieu thereof judgment be entered herein affirming the judgment of the District Court.

Respectfully submitted.

Alvin H. Lane, of Dallas, Texas, Attorney for Appellee, W. D. Sanders. Winfrey & Lane Dallas, Texas, of Counsel.

I hereby certify that in my opinion the foregoing petition is well founded in fact and in law and should be granted, and that it is not interposed for delay.

Alvin H. Lane.

No. 6796

ARMOUR FERTILIZER WORKS

versus

W. D. SANDERS ET AL.

ORDER DENYING REHEARING

Extract from the Minutes of April 1st, 1933

As neither of the judges who concurred in the judgment of the court in the above numbered and entitled cause is of opinion that the petition for rehearing should be granted, it is ordered that the said petition be and the same hereby is denied.

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CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 222 to 251 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 6796, wherein Armour Fertilizer Works is appellant, and W. D. Sanders, et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 221 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 11th day of May, A. D. 1933.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. [Seal United States Circuit Court of Appeals, Fifth Circuit.]

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 18, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4394)

FILE COPY

FILED
MAY 27 1936

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 106

W. D. SANDERS, PETITIONER,

vs.

ARMOUR FERTILIZER WORKS AND NATIONAL FIRE INSURANCE COMPANY.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

THOS. D. GREENHAM,
*Dallas, Texas,*
*Attorney for Petitioner W. D. Sanders.*

WINFREY & LANE,
ALVIN H. LANE,
*Dallas, Texas,*
*Of Counsel.*

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# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1933**

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## No. 106

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W. D. SANDERS, PETITIONER,

*vs.*

ARMOUR FERTILIZER WORKS AND NATIONAL FIRE INSURANCE COMPANY.

---

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.**

---

*To the Supreme Court of the United States:*

Now comes W. D. Sanders, whose domicile is in Bowie County, Texas, and respectfully petitions this Honorable Court to issue its most gracious writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, for the purpose of reviewing a judgment rendered by the majority of said court on March 10, 1933, in a certain cause styled and numbered in said court No. 6796, *Armour Fertilizer Works, Appellant,* v. *W. D. Sanders et al., Appellees; Armour Fertilizer Works, Appellant,* v. *W. D. Sanders et al., Appellees,* Consolidated Cases.

## Questions Presented for Review.

1. Whether a United States District Court has the right, in enforcing the full faith and credit clause of the United States Constitution, to substitute for the decision of the Supreme Court of Illinois, interpreting its own laws, that the institution of a garnishment suit within that State and under its laws, prior to and without the rendition of final judgment therein, is entitled to no faith and credit in the courts of a sister State, its own interpretation of the proper effect of such inchoate procedure, and to give to such incomplete judicial proceeding, in Texas, the effect of a final judgment awarding the entire debt against which the garnishment was run to the satisfaction of the claim sued upon, but never established by final judgment in Illinois.

2. Whether a United States District Court, sitting in Texas, whose jurisdiction has been invoked in interpleader to determine the priority of right to a fund of money deposited in its registry, as between two claimants, neither of whom has obtained a judgment for the fund, and both of whom are personally subject to its jurisdiction, is bound by the full faith and credit clause to disregard the right of exemption accorded to a Texas citizen by the Constitution and laws of that State against any form of attachment or garnishment of his homestead and household goods, in favor of a claimant upon a promissory note executed and payable in Texas, who has resorted to the courts of another State in order to defeat the exemption laws of Texas.

## Statement of the Nature and Result of the Suit to Date.

This suit originated upon two separate petitions of interpleader filed respectively by respondents, the National Fire Insurance Company, and Hartford Fire Insurance Company, in the United States District Court for the East-

ern District of Texas, Texarkana Division, against W. D. Sanders, the petitioner herein (hereinafter called "Sanders"), and Armour Fertilizer Works (hereinafter called "Armour"), which suits were brought under Title 28, U. S. C. A., Sec. 43, paragraph 26. At an early date in the proceedings the two cases were consolidated, and have at all times thereafter been treated as one case.

Prior to July 3, 1927, the insurance companies had issued fire insurance policies to Sanders covering a dwelling house and the furniture therein situated in De Kalb, Texas. On that date the house and furniture were destroyed by fire, and by subsequent settlement agreement between Sanders and the respective companies, the liability of the companies was fixed at $3,400 as to the National Fire Insurance Company, and at $4,250 as to the Hartford Fire Insurance Company (R. 6, 12).

On July 18, 1927, Armour filed a suit against Sanders in the Municipal Court of Cook County, Illinois, based upon promissory notes dated at De Kalb, Texas, and payable in Fort Worth, Tarrant County, Texas, aggregating $7,589.81 (R. 89). Service of process was had on Sanders in that suit by publication of notice of the filing of the suit, as provided by the laws of Illinois (R. 113, 114) and by the mailing of a copy of said notice to Sanders by the Clerk of the Court (R. 112). No personal service was secured upon Sanders within the State of Illinois, nor did Sanders ever enter a personal appearance in said cause (R. 85).

In connection with said suit against Sanders, Armour also filed an attachment bond and caused writs of attachment to be served upon the two insurance companies on July 19, 1927 (R. 105).

On July 25, 1927, Hartford Fire Insurance Company filed its answer to written interrogatories propounded to it in said cause, denying that it was indebted to Sanders

or that it had in its possession any properties or effects belonging to him (R. 107-110).

On September 19, 1927, an interlocutory judgment by default was entered against Sanders in said suit, which order recited that "the attachment herein be and it hereby is sustained," and gave Armour judgment against Sanders for $7,589.81, together with court costs (R. 115-116).

On June 27, 1928, National Fire Insurance Company filed its answer in said cause, admitting an indebtedness to Sanders in the sum of $3,400, but pleading that said indebtedness was exempt to Sanders from garnishment or attachment under the provisions of the Constitution and Statutes of Texas (R. 117-125). On the same date Hartford Fire Insurance Company also filed its amended answer, admitting its indebtedness in the sum of $4,250, and likewise pleading the Texas exemption of said indebtedness (R. 125-131). No further action appears to have ever been taken in said Illinois suit.

On June 12, 1928, the insurance companies filed the present interpleader suits in the Eastern District of Texas, Texarkana Division (R. 10, 18) alleging that Armour had instituted garnishment proceedings against them in Chicago, and that Sanders was threatening to sue them in Texas under the claim that the indebtedness arising under the respective policies of insurance was exempt to him under the Constitution and Statutes of the State of Texas, as construed by its Supreme Court.

Pursuant to these petitions, said United States District Court enjoined Armour from further prosecution of its suit in Chicago on July 2, 1928 (R. 69-70). The record does not show it, but the district judge subsequently entered an order dismissing both bills of interpleader (33 Fed. (2) 157). The insurance companies perfected a joint appeal from the order of dismissal, which appeal was determined

in their favor by the Circuit Court of Appeals for the 5th Circuit (38 Fed. (2) 212), and the cause was remanded with instructions to the district court to sustain the bill. Pursuant to this decree, the district court on September 14, 1931, entered an order in this cause, sustaining the bills of interpleader (R. 72-74), the case was tried on the merits of the respective claims of Sanders and of Armour, and on August 6, 1932, decree was entered in the District Court awarding both of the funds in controversy to Sanders and taxing certain items of costs against the impounded funds and other items against Armour (R. 200-201). The only contested issue of fact on this trial was the contention of Armour that Sanders had abandoned his homestead prior to the fire, which question was resolved against Armour by the district judge upon competent evidence (R. 194). We do not find this decision of the district court reported in the Federal Reporter system.

In due time Armour perfected an appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit at New Orleans. The appeal was submitted to said court on January 17, 1933, and on March 10, 1933, Judges Bryan and Sibley of said court rendered judgment upon said appeal, and ruled that the impounded funds should be applied first to the extinguishment of the "judgment" rendered against Sanders in the garnishment proceeding, and the remainder, if any, paid over to him. On March 22, 1933, Judge Hutcheson of said court rendered his opinion dissenting from the opinion of the majority, and on March 27, 1933, within the period allowed by the rules of said court, Sanders filed his motion for a rehearing of said appeal, which motion was overruled without opinion on April 1, 1933. Sanders now asks this Honorable Court for a writ of certiorari to review this judgment of the circuit court of appeals.

## Reasons for Granting this Petition.

The question as to what effect, if any, has to be given by a Federal court sitting in Texas in an interpleader suit to a garnishment proceeding instituted in Illinois, but the further prosecution of which has been permanently enjoined by such Federal court prior to the rendition of judgment therein, is an important question of Federal law which has not been, and which should be definitely settled by this Honorable Court.

In *Cole* v. *Cunningham*, 133 U. S. 107, 33 L. Ed. 538, this Honorable Court held that a garnishment proceeding instituted in the State of New York did not, without the rendition of final judgment therein, confer upon the plaintiff in garnishment any rights which were entitled to full faith and credit in the State of Massachusetts. That case did not arise as an interpleader suit, but we believe, nevertheless, that the judgment of the circuit court in this case, holding, as it does, that the mere institution of a garnishment proceeding, without the rendition of final judgment therein, creates a vested right to the garnished debt which must be recognized and enforced in other States of the Union, even though in violation of their public policy, is in conflict with and in violation of said opinion of this Honorable Court in *Cole* v. *Cunningham*.

A further important question as to conflict of remedial rights is presented in this case in the fact that, by the laws of the State of Texas, in which State this suit was tried, the garnished debt is exempted to the principal debtor, whereas had the garnishment suit gone to final judgment in Illinois, the courts of that State would have refused to honor the exemption accorded to such debtor by Texas law. The decision of the circuit court below, holding that under such circumstances the Texas court, trying this case in Texas, must enforce the remedial laws of Illi-

nois, even though in conflict with and in derogation of the exemption rights accorded to petitioner Sanders under the law of the forum, is directly in conflict with prior decisions of this Honorable Court in the cases of *Scudder* v. *Union Central National Bank,* 91 U. S. 406, 23 L. Ed. 245; *Pritchard* v. *Norton,* 106 U. S. 134, 27 L. Ed. 107, 1 Sup. Ct. Rep. 102, and *Bank of U. S.* v. *Donnally,* 8 Peters 361, 8 L. Ed. 974, in all of which cases the principle of law common to all judicial systems, that all matters of remedial law are governed by the law of the forum, is accepted and adopted. Such decision on this point is also in conflict with the decision of this Honorable Court in *Cole* v. *Cunningham, supra,* wherein this Honorable Court held that while the United States Constitution requires the several States to give general validity, faith, and credit to the judgments of sister States as evidence, it does not confer upon such judgments or proceedings the right of priority or privilege of lien which they held in the State where they were pronounced, but that only which the *lex fori* gives to them by its own laws in their character of foreign judgments. We submit that in this particular, said judgment of the circuit court is wholly without precedent, and is opposed to the uniform, prior expressions of this Honorable Court on this point.

It seems to us, also, that several erroneous statements upon important principles of general law made by the majority of the circuit court should be reviewed and corrected by this Honorable Court. On page 280 of the record, Judge Sibley says:

> "We do not think the filing of the Federal interpleader and the payment thereunder of the money into the District Court in Texas operated to bring it under the dominion of Texas law. The applicant for interpleader often has a choice of forum, and he cannot at his will subject the rights of the contesting claimants

to one set of laws rather than another. The purpose of the interpleader statute was to give the stakeholder protection, but in nowise to change the rights of the claimants by its operation. The interpleader is a suit in equity, and equitable principles and procedure are the same throughout the Federal jurisdiction. The court is to weigh the right or title of each claimant under the law of the State in which it arose, and determine which according to equity is the better. The decision should be the same whether the interpleader is filed in Illinois or in Texas."

As we have previously pointed out, this statement is, in effect, a denial of the principle of law above referred to that all matters of remedial law are determined according to the law of the forum. Garnishment is purely a statutory remedy. The right of exemption is remedial and procedural. According to Texas law the remedy of garnishment is not available against the insurance proceeds of a homestead or of household goods of a Texas citizen. Article 16, Sec. 50, Constitution of Texas; Article 3832, R. C. S. of Texas; *Cameron* v. *Fay*, 55 Tex. 58; *Chase* v. *Swayne*, 88 Tex. 218, 30 S. W. 1049; *Travelers Insurance Co.* v. *Chase*, 31 S. W. 1103.

If the circuit court meant by the statement quoted above to say that the Texas exemption laws are not binding on a Federal *equity* court sitting in Texas, as distinguished from a trial on the law side of the docket, we believe the decision is in conflict with prior decisions of this Honorable Court in *Mason* v. *U. S.*, 260 U. S. 545, 67 L. Ed. 396, 43 Sup. Ct. Rep. 200; *Bronson* v. *Kinsey*, 1 Howard 311; *Lanahan* v. *Sears*, 102 U. S. 318, 26 L. Ed. 180, as well as with the principle of U. S. Equity Rule 23, requiring that law questions arising in a suit in equity be determined according to the principles applicable. We know of no prior Federal decision sustaining the statement of the circuit court that the Texas exemp-

tion laws are not binding upon a United States District Court in equity, sitting in Texas.

If the exception to the general rule is supposed to arise because of the fact that this is an interpleader suit, we know of no prior decision by any court undertaking to engraft such an exception upon the universal rule. The rule is stated by all the authorities in the most general terms and without exception. The only authority cited by the circuit court in support of its proposition is a prior decision of its own. *Vogel* v. *Thiesing*, 55 Fed. (2) 205, which in our opinion is not in point. The conflictng laws in that case were not procedural, but substantive, and there is no question but that any court, in passing upon the existence of substantive rights, must apply the law of the jurisdiction or jurisdictions in which those rights arose.

The principle above set out by the circuit court is not only in violation of well established judicial precedent, but if followed to its logical conclusion, it would substitute, for a fixed rule of law binding upon all courts within the jurisdiction, the principle of determining valuable property rights in interpleader suits, according to the personal preferences of the respective Judges as to what would be an equitable solution of the controversy. The District Judge might personally consider the Texas procedure to the more equitable. The circuit court might prefer the Illinois procedure. If the law of still a third State or country were involved, it is conceivable that on appeal to the Supreme Court the judges then composing such court might rule that while the lower courts had applied the correct principle of law, *i. e.*, to decide the case according to the most equitable remedial statute involved, nevertheless such judges were personally mistaken in considering either the Texas or the Illinois remedy as being more just than the remedy afforded by the law of such third State, and reverse the case on that ground. Under such a rule of law,

no one could tell in advance of decision by any court what the final decision would be. The case might be filed before a district judge who considered liberal exemption laws equitable, and before trial he might die and be replaced by a judge who considered all exemption laws to be inequitable. We believe it to be highly important that this attempt by the circuit court to arrogate to the judiciary the privilege of disregarding and of violating any sovereign law of the State which such court may consider to be inequitable should be rejected and denounced by this Honorable Court.

We submit, furthermore, that the holding by the majority of the circuit court in this case, that it is inequitable for a Texas citizen to insist upon the exemption rights conferred upon him by the laws of his home State, as against a creditor who extended credit to him upon a note executed and payable within the State of Texas, is contrary to the attitude of this Honorable Court as stated in *Holden* v. *Stratton*, 198 U. S. 214, as follows:

> "It has always been the policy of Congress, both in general legislation and in bankruptcy acts, to recognize and give effect to State exemption laws."

The Federal court sitting in Texas is just as much bound to enforce the public policy of the State as was the State court of Massachusetts in *Cole* v. *Cunningham*, and has just as much right to protect a citizen of Texas from an attempted evasion of his constitutional and statutory exemption rights as the State court of Massachusetts had to secure to its citizens the benefit of its insolvency laws.

The opinion of the circuit court has also decided another important question of general law in a manner in conflict with established precedent, in holding that Title 28, U. S. C. A., Section 687, meant, not that the judicial proceedings in Illinois were to be accorded the faith and credit in Texas which they were accorded under the law and usage of Illinois as interpreted by its Supreme Court, but that

where the Circuit Court of the Fifth Circuit thought that such Illinois decisions were erroneous, such judicial proceedings should be accorded the faith and credit to which such circuit court thought they should have been entitled in Illinois under a proper interpretation of its laws. We submit that such holding by the circuit court is in direct conflict with prior decisions of this Honorable Court, notably in *Robertson* v. *Pickrell*, 109 U. S. 608, 3 Sup. Ct. Rep. 407-408; *Union & Planters Bank* v. *Memphis*, 189 U. S. 71, 23 Sup. Ct. Rep. 605-606; and *Corrington v. First National Bank*, 198 U. S. 100, 25 Sup. Ct. Rep. 562, 564, in all of which cases this Honorable Court specifically laid down the rule that regardless of the rule prevailing in the courts of the United States, a judicial proceeding in a State could not be given greater force or effect outside of such State than the courts of such State themselves accorded to it.

We believe that the action of the circuit court in repudiating the general rule and the express language of the statute, and in giving to the Illinois proceeding a greater effect and credit in Texas than was accorded to it by the laws and usage of Illinois, is an important deviation from the general rule, which should not be ratified or sanctioned by this Honorable Court.

Finally, we believe it is important that this Honorable Court clarify once and for all the character of a garnishment proceeding as a personal action, rather than as a true proceeding *in rem*. The confusion which exists on this important point is manifest in the majority opinion of the circuit court below, in which, as aptly stated by Judge Hutcheson in his dissenting opinion (R. 234):

> "The majority holding to the confused notions of debt *situs* advanced in *Chicago & Rock Island R. R.* v. *Sturm*, 174 U. S. 170; *King* v. *Cross*, 175 U. S. 396, in determining jurisdictions in garnishments exploded in

*Harris* v. *Balk*, 198 U. S. 215, treat garnishment proceedings as now *in personam*, now *in rem*, and contrary to the universally recognized rule that priority of judgment rather than priority of garnishment controls, seeks to rest upon the universally denied theory that the garnishment impounded a *res* in Illinois, its conclusion that a lien was fixed there."

It will be noted that in *Harris* v. *Balk*, *supra*, this Honorable Court, on page 627 of the Supreme Court Reporter, cited with approval the case of *Lancashire Insurance Co.* v. *Corbetts*, 165 Ill. 592, 46 N. E. 631, in which case the Supreme Court of Illinois expressly held that the service of a writ of garnishment in Illinois did not confer upon the courts of that State exclusive right to deal with the garnished debt or debtor, and that such incomplete judicial proceeding prior to the rendition of final judgment therein was entitled to no faith or credit from the courts of other States. This is one of the Illinois decisions criticized by the circuit court of appeals as incorrectly interpreting the law and usage of Illinois.

We respectfully submit that there is so much confusion at the present time as to the effect of the service of a writ of garnishment without final judgment, especially where the debt sought to be garnished is subject to an exemption privilege at the domicile of the principal debtor, that this Honorable Court should grant a writ of certiorari in this case in order to clarify, once and for all, the nature and effect of such a proceeding.

WHEREFORE your petitioner respectfully prays that writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete tran-

script of the record and all proceedings in the case numbered and entitled on its docket No. 6796, Armour Fertilizer Works, Appellant, *vs.* W. D. Sanders *et al.*, Appellees, and that said decree of said Circuit Court of Appeals for the Fifth Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just, and your petitioner will ever pray.

W. D. SANDERS,
By T. D. GRESHAM,
*Dallas, Texas.*

SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1933**

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# No. 106

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W. D. SANDERS, PETITIONER,

*vs.*

ARMOUR FERTILIZER WORKS AND NATIONAL FIRE INSURANCE COMPANY.

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## BRIEF IN SUPPORT OF PETITION OF W. D. SANDERS FOR A WRIT OF CERTIORARI.

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### Prior Court Opinions in this Case.

The decision of District Judge Estes, dismissing the petitions of plaintiffs in interpleader in this case on June 15, 1929, is reported in 33 Fed. (2) 157.

On February 25, 1930, this decision was reversed by the Circuit Court of Appeals for the Fifth Circuit, and the cause remanded with instructions to sustain the bills in interpleader. 38 Fed. (2) 212.

We have been unable to find a Federal Report of the decision of District Judge Bryant, rendered on June 30, 1932, awarding the funds in controversy to petitioner W. D. Sanders. His findings of fact and conclusions of law appear on pages 192-195 of the record, and the decree itself on pages 200-201.

The decisions of Circuit Judge Sibley, rendered on March 10, 1933, for a majority of the Circuit Court of the Fifth Circuit, reversing the decision of Judge Bryant and remanding the case with instructions to award the funds in controversy to the satisfaction of the claim of Armour Fertilizer Works in preference to the exemption claim of petitioner W. D. Sanders, has not been reported as yet, nor has the opinion of Circuit Judge Hutcheson, dissenting from such majority opinion, been reported. The latter opinion was filed on March 22, 1933.

Sanders filed his petition for a re-hearing of said cause by said circuit court of appeals within the time fixed for such petition by the rules of said court, which petition was considered by said court and overruled by it on April 1, 1933, without written opinion.

## Jurisdiction.

This Honorable Court has jurisdiction to consider the petition of W. D. Sanders for a writ of certiorari in this cause under the provisions of Title 28, U. S. C. A. Section 347. This petition is filed within three months after April 1, 1933, the date upon which petitioner's petition for a re-hearing was overruled by the circuit court of appeals, as well as within three months of the original decision in the case (March 10, 1933).

## Statement of the Case.

The facts of the case have been fully stated in the petition for a writ of certiorari, pages 2-5, and said statement is referred to for the purposes of this brief.

## Specification of Errors.

1. The circuit court erred in holding that the judicial proceeding instituted by Armour in Illinois, which under the laws and practice of that State merely gave rise to an

inchoate and defeasible claim upon the debt sought to be garnished, in an indeterminate amount so far as said garnishing plaintiff was concerned, must be honored in Texas as a definite and final judgment awarding the entire debt sought to be garnished to the satisfaction of Armour's claim.

2. The circuit court erred in announcing as an exception to the universally accepted rule of law that all matters of procedure, including the remedies of garnishment and exemption, in all characters and classes of actions, are to be governed wholly by the law of the forum, the principle that in interpleader suits the courts of the forum are free to disregard its procedural laws and to follow such procedural law, domestic or foreign, as may appeal to such court as reaching the most equitable result under the circumstances.

3. The circuit court erred in holding that it is the policy of the United States to aid a creditor to collect his claim against a debtor in violation of the exemption laws of the State of the debtor's domicile, and especially so in a United States District Court sitting within the confines of the State whose exemption laws the creditor is seeking to evade.

**Authorities under First Assignment of Error.**

28 U. S. C. A., Sec. 687.

*Lancashire Insurance Co.* v. *Corbetts*, 46 N. E. 631.

*Becker* v. *Ill. Central R. R. Co.*, 250 Ill. 40, 95 N. E. 42, 35 L. R. A. (N. S.) 1154.

28 C. J. 252.

*Bigelow* v. *Andress*, 31 Ill. 322.

*McElwee* v. *Wilce*, 80 Ill. App. 338, 342.

*Robertson* v. *Pickrell*, 109 U. S. 608, 3 Sup. Ct. Rep. 407.

*Union & Planters Bank* v. *Memphis*, 189 U. S. 71, 23 Sup. Ct. Rep. 604.

*Covington* v. *First National Bank*, 198 U. S. 100, 25 Sup. Ct. Rep. 562.
*Free* v. *Western Union Tel. Co.*, 147 N. W. 1040.
*Bruce* v. *Ackroyd*, 110 A. 835, 95 Conn. 167.
Black on Judgments, page 1039.
34 C. J. 1105.
15 R. C. L. 900.
*Aldrich* v. *Kinney*, 4 Conn. 380-386.
*C. R. I. & P. Ry. Co.* v. *Sturm*, 174 U. S. 170.
*Harris* v. *Balk*, 198 U. S. 215, 25 Sup. Ct. Rep. 627.
*Kline* v. *Burke Construction Co.*, 260 U. S. 226, 67 L. Ed. 226.
*Cole* v. *Cunningham*, 133 U. S. 107, 33 L. Ed. 538.
*National Bank* v. *Indiana Banking Co.*, 2 N. E. 401.
*Reeve* v. *Smith*, 113 Ill. 477.
*Martin* v. *Dryden*, 6 Ill. 187, 213.
*Corbin* v. *Graves*, 27 Fed. 644.
*Walker* v. *Garland*, 285 S. W. 1078.
*Leaks* v. *Seaboard Airline Ry.*, 60 S. E. 343.
Rood on Garnishment, Sec. 11.
1 Lewis' Sutherland on Statutory Construction, page 283.
*State Bank of Chicago* v. *Thweatt*, 111 Ill. App. 599.
U. S. Constitution, Art. 4, Sec. 1.
Illinois Attachment Act, Sec. 37.

**Argument under First Assignment of Error.**

The majority of the circuit court rested their opinion reversing the judgment of the district court primarily upon the proposition that the full faith and credit clause of the United States Constitution required that the inchoate Illinois proceeding be given the effect of a final judgment definitely awarding the entire funds in controversy in this cause to the satisfaction of Armour's claim against Sanders. This conclusion is reached despite the lack of

any final judgment in the Illinois proceeding perfecting the creditor's alleged "lien", which is admitted by the circuit court to be inchoate and defeasible (R. 225), or even a judgment establishing the creditor's alleged claim against his principal debtor.

The full faith and credit clause of the United States Constitution (Art. 4, Sec. 1), after prescribing in general terms that full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State, leaves the specific enforcement of the clause up to statutory enactment by Congress. This power has been exercised by Congress, and the statute on this point (28 U. S. C. A., Sec. 687) is clear. The judicial proceeding relied upon by Armour in this case is to be given only such faith and credit as it would be entitled to by law or usage in the courts of Illinois. The first pertinent inquiry in this case is, therefore, what faith and credit would be given to the Chicago proceeding in an Illinois court?

We believe that the case of *Lancashire Insurance Company* v. *Corbetts, supra*, is a clear statement by the Illinois Supreme Court of the effect ascribed by that court to the mere institution of a garnishment proceeding in Illinois prior to the rendition of final judgment in such suit. In that case a garnishment was run in Illinois by an Illinois creditor on an insurance company which was doing business in Illinois and Wisconsin. Subsequently, a garnishment was run on the same company, and on the same debt in Wisconsin, which court proceeded to render judgment on its garnishment suit, disregarding the pendency of the Illinois proceeding. The insurance company then plead in Illinois its payment of the Wisconsin judgment, in bar of the Illinois garnishment. The Supreme Court of Illinois held that this was a good bar, and in the course of its discussion pointed out that in its judgment the mere pendency of a garnishment proceeding in Illinois prior to the rendi-

tion of final judgment therein was not entitled to any credit in the courts of another State. The court held that the Wisconsin court was a court of coordinate jurisdiction with the Illinois court, and that it had just as much right to proceed with the trial of its garnishment suit as the Illinois court had to proceed with its case.

In a subsequent case, *Becker* v. *Illinois Central R. R. Co.*, *supra*, the Supreme Court of Illinois, consistent with its prior holding in the Lancashire case, held that the institution and pendency of a garnishment proceeding in Missouri which had not been reduced to final judgment was no bar to a suit by the creditor against his debtor in Illinois. In this case the Illinois Supreme Court said:

> "By the service of the garnishee's summons in Missouri, Miller (the Missouri creditor) acquired a contingent or inchoate lien upon the debt and appellant could not thereafter make a voluntary payment to the appellee; but the right which Miller acquired was dependent upon subsequently obtaining judgment, and that was not accomplished until a judgment had been recovered in this State, where the debt was free from any right or claim. The law of this State for the protection of the wage earner who has a family and resides with the same, exempts his wages from garnishment to a certain amount, and it is the policy of the State to enforce within its own borders the laws made for the benefit of its citizens."

In 28 C. J. 252, we find the following statement:

> "It would seem that unless the statutes expressly so provide the service of a writ of summons in garnishment or trustee process does not in the strict sense create a lien upon any specific property in the hands of the garnishee or trustee but gives rise only to a contingent personal liability to respond thereafter to any judgment which may thereafter be recovered by plaintiff against defendant."

This statement is borne out authoritatively by the Illinois decisions on the subject. In *Bigelow* v. *Andress, supra,* the Supreme Court says on page 332 (referring to property in the hands of the garnishee):

> "The garnishee still has the right to retain it, and by the service, only becomes liable to account for it, or its proceeds, if judgment shall be rendered against him on the trial."

Again, on page 33, the court says:

> "These provisions all repel the presumption that the legislature designed to create any lien upon, or place the property in the hands of the garnishee in the custody of the law."

In *McElwee* v. *Wilce, supra,* the court of appeals says:

> "The service of the garnishee writ on Wilce did not create a lien in favor of McElwee and Company, the creditor, upon the monies in Wilce's hands. By it there was created a personal liability of Wilce to respond to any judgment that might be proved against him, but nothing more."

The circuit court recognizes indirectly that under the decisions above referred to, the law is definitely established in Illinois that the institution of a garnishment proceeding in that State affixes no lien, impounds no *res*, and is entitled to no faith and credit in the courts of other States unless and until it has been reduced to final judgment. The court held, however, that this interpretation of Illinois law by the Supreme Court of that State was an incorrect interpretation; that under the Federal decisions the institution of a garnishment proceeding was entitled to full faith and credit in the courts of other States, and that "The Federal cases are controlling, and establish that the incomplete garnishment proceeding in Illinois has the effect of a lien, and

that full faith and credit in other States and in Federal courts require that like effect be given it in them."

In *Robertson* v. *Pickrell, supra,* it is said on pages 408-9 of the Supreme Court Reporter:

> "The act of Congress declaring the effect to be given in any court within the United States to the records and judicial proceedings of the several States, does not require that they shall have any greater force and efficacy in other courts than in the courts of the States from which they are taken, but only such faith and credit as by law or usage they have there. Any other rule would be repugnant to all principle, and, as we said on a former occasion, would contravene the policy of the provisions of the Constitution and laws of the United States on that subject. *Board of Public Health* v. *Columbia College,* 17 Wall. 529."

In *Union & Planters Bank* v. *Memphis, supra,* the contention was made that a certain judgment in the State court of Tennessee furnished an effective bar to the cause of action involved in the case under consideration under the principle of *res adjudicata.* Mr. Chief Justice Fuller, in disposing of this contention, said on page 608 of the Supreme Court Reporter:

> "As the judgment pleaded had no force or effect in the Tennessee State courts other than as a bar to the identical taxes litigated in the suit, the courts of the United States can accord it no greater efficacy."

In *Covington* v. *First National Bank, supra,* a question very similar to that involved in the Union and Planters Bank case was again before the Supreme Court, and again this Honorable Court affirmed the principle that regardless of the effect attached to a Federal judgment on a similar question, which effect apparently differed from the State rule, the effect to be given to a State judgment, when relied on in the Federal court, could be no greater than was

accorded to it by the courts of the State where it was rendered.

In *Free* v. *Western Union Telegraph Company*, 147 N. W. 1040, the Supreme Court of Wisconsin said:

> "The highest evidence of what faith and credit a judgment has in the State of its origin is the decisions of the court of last resort of that State."

Writ of error in the above case was dismissed by this Honorable Court, 37 S. Ct. Rep. 20, 242 U. S. 613, 61 L. Ed. 527.

In *Bruce* v. *Ackroyd*, 110 A. 835, 95 Conn. 167, the Supreme Court of Connecticut said:

> "There can be no doubt but that any State may determine for itself what are the essentials of a judgment of record in its own courts. If the record discloses such essentials as to entitle it to recognition as a judgment in a domestic court, it is, under the United States Constitution and the statute, entitled to the same recognition in the courts of other States. Conversely, it must follow that if the domestic courts would not recognize the record as establishing a judgment, it cannot be given that effect in any other State."

We submit that under the authorities cited, as well as under the uniform prior holdings of this Honorable Court, the law of any State as interpreted by its Supreme Court is binding upon the Federal court, and the decision of the circuit court in the case at bar, ascribing to the Illinois garnishment proceeding the effect of an established lien upon the funds in controversy, despite the fact that no such effect is accorded to it under the laws and usage of Illinois, is without judicial precedent or legal warrant.

It seems to us that the interpretation placed upon the Illinois proceeding by the Illinois courts as above set out should be conclusive of this matter. Those decisions clearly

do not warrant the contention that the incomplete garnishment proceeding created an effective claim to the funds in controversy which had to be honored in Texas, and we believe that this Honorable Court should grant the writ of certiorari prayed for herein for the purpose of correcting the erroneous assumption by the circuit court that it had the right to correct the Illinois Supreme Court in its interpretation of Illinois law, and to give to the garnishment proceedings in question the effect which it, the circuit court, thought that it should have under the laws and usage of Illinois.

It seems to us, however, that not only is the decision of the circuit court at variance with the established law of Illinois, but that that court has also erred in its interpretation of prior decisions of this Honorable Court as sustaining the position taken by it that the incomplete garnishment proceeding must be honored as an award of the garnished debt to the Illinois plaintiff.

The question as to what character of judicial proceedings must be given full faith and credit under the Federal Constitution has been the subject of numerous comments by courts and text writers, all of whom impliedly hold that this phrase refers only to a final judgment, and most of whom expressly so state. By the term "final judgment" as so used, is meant not necessarily one from which no appeal has been taken to a higher court, but a definite judgment upon the merits of the controversy, finally disposing of it so far as the trial court is concerned. In Black on Judgments, at page 1039, the author states:

> "It is well settled, upon the authorities that the pendency of a suit in one State cannot be pleaded in bar or abatement of a second action in another State between the same parties and for the same cause of action; nothing but a definitive judgment on the merits, merging the demand, can produce that result."

Again, on page 1042, he says:

> "We are, therefore, next to consider judgments of a sister State as a cause of action. And in the first place, a judgment, to be available for this purpose, must be a valid, subsisting and final adjudication. It must be capable of enforcement and fit to serve as the foundation for final process, in the State where it was rendered."

In 34 *Corpus Juris*, 1105, the statement is made:

> "In order that an action may be maintained in one State upon a judgment recovered in another State, it is necessary that the judgment should be a valid and final adjudication, remaining in full force and virtue in the State of its rendition and capable of being there enforced by final process. Such judgment must be of a nature to create a definite and absolute indebtedness against the judgment defendant, and must have been rendered by a Court having jurisdiction of the parties and the subject matter."

In 15 R. C. L. 900 the statement is made:

> "A judgment must be final before an action on it can be sustained. * * * A final decree is one which determines and disposes of the whole merits of a cause before the Court, or a branch of the cause which is separate and distinct from the other parts of the case, reserving no questions for future determination. If findings of fact on any material matter involved in the case are left open for the future determination of the Court, the decree is not final until that determination is concluded. A judgment to be final must be complete and definite in its nature, and must be certain or capable of being made so."

In *Aldrich* v. *Kinney, supra*, an early decision on the point which is much quoted, the statement is made:

> "'Records and judicial proceedings' are such and such only, as are duly rendered by a court of compe-

tent jurisdiction, against those who appear to defend or who are legally notified to appear."

We do not understand the case of *C., R. I. & P. Railway Company* v. *Sturm, supra,* relied upon by the circuit court, to be at variance with the foregoing generally accepted rule. In that case an Iowa creditor of a Kansas employee of the railway company filed a garnishment suit against the railway company in Iowa and secured a judgment in the justice court, which was appealed to the district court. This proceeding was plead by the railway company in defense of a suit against it by its employee in Kansas, where the wages were exempt to him, and was declared by the courts of Kansas to constitute no defense to such action. It will be noted from the report of the case in the State Court, 49 Pac. 337, that the Railway Company did not even attempt to plead the mere pendency of the garnishment proceeding against it as a defense in its employee's suit. It waited until a definitive judgment had been rendered in the garnishment suit, and then plead such judgment in the Kansas suit. True, that judgment was on appeal, and for that reason the Railway Company was only entitled to an abatement of the Kansas suit pending final determination of the appeal, but the case is essentially different from the case at bar, in that a definitive judgment had been rendered in the garnishment proceeding in the Sturm case by the court before whom it was brought, which judgment, under the authorities above quoted, was entitled to full faith and credit in the courts of Kansas.

We do not believe that the circuit court is correct in its assumption that this Honorable Court is opposed to the rule laid down by the Illinois Supreme Court in the Becker and Lancashire cases, *i. e.*, that an incomplete garnishment proceeding, not reduced to final judgment, should have no effect whatever upon the exercise of jurisdiction by another court in another State over a controversy concerning a debt

lawfully brought before it, except, of course, to serve as a basis for a bill of interpleader, where that relief is possible. On the contrary, this Honorable Court cited the Lancashire case with approval in its decision of the case of *Harris* v. *Balk, supra,* at page 627, Supreme Court Edition. We believe, furthermore, that the principle stated by Justice Sutherland of this Honorable Court in *Kline* v. *Burke Construction Company, supra,* on page 81 of the Supreme Court Edition, is in accord with such view. In that case, after pointing out that where a court has taken into its jurisdiction a specific thing, that *res* is withdrawn from the power of other courts of coordinate jurisdiction, Justice Sutherland continues:

> "But a controversy is not a thing, and a controversy over a mere question of personal liability does not involve the possession or control of a thing, and an action brought to enforce such a liability does not tend to impair or defeat the jurisdiction of the court in which a prior action for the same cause is pending. Each court is free to proceed in its own way, and in its own time, without reference to the proceedings in the other court. Whenever a judgment is rendered in one of the courts and pleaded in the other, the effect of that judgment is to be determined by the application of the principles of *res judicata* by the court in which the action is still pending in the orderly exercise of its jurisdiction, as it would determine any other question of fact or law arising in the progress of the case. The rule, therefore, has become generally established that where the action first brought is *in personam* and seeks only a personal judgment, another action for the same cause in another jurisdiction is not precluded."

The case of *Cole* v. *Cunningham, supra,* is in our opinion a still more definite and applicable decision by this Honorable Court in conflict with the decision of the circuit court in the case at bar. In that case a garnishment proceeding

had been instituted in the State of New York, and a court of Massachusetts having personal jurisdiction over the plaintiff in the New York proceeding permanently enjoined him from prosecuting his suit to final judgment. The attaching creditor plead that the full faith and credit clause required that his New York proceeding be recognized in Massachusetts as creating a prior claim in his favor upon the garnished debt. In discussing this point, this Honorable Court said on page 543 of the Law Edition:

> "An attachment is in the nature of, but not, strictly speaking, a proceeding *in rem*, since that only is a proceeding *in rem* in which the process is to be served on the thing itself. If in an attachment suit, the defendant appears, the cause becomes mainly a suit *in personam*, with the added incident, that the property attached remains liable, under the control of the court, to answer any demand which may be established against defendant by the final judgment of the court. But, if there is no appearance of the defendant, and no service of process on him, the case becomes, in its essential nature, a proceeding *in rem*, the only effect of which is to subject the property attached to the payment of the demand which the court may find to be due to the plaintiff. *Cooper* v. *Reynolds* (77 U. S.), 10 Wall. 308, 318. The lien is inchoate, and the property attached to await the result of the suit. If a judgment for the plaintiff is obtained, the lien becomes perfected and the property is applied to satisfy the judgment. If plaintiff fails in his action, the lien falls with it. And he may so fail by reason of the discharge of the defendant in insolvency, when he is a citizen of the same State, or has made himself a party to the proceedings in insolvency, or by the action of other courts of the State where the suit is pending, or elsewhere, if jurisdiction *in personam* be obtained. So that, after all, the inquiry is, whether in a proper case the equity courts of one State can control persons within their jurisdiction from the prosecution

> of suits in another. If they can, in accordance with the principles of equity jurisprudence and practice, no reason is perceived for contending that the Constitution of the United States prescribed any different rule. And the determination of what is a proper case for equity interposition would seem to be reposed in the court whose authority is invoked, though some remarks in that regard may not improperly be made."

The only distinction that can be made between the case of *Cole* v. *Cunningham* and the case at bar is that in the Cole case the jurisdiction to permanently enjoin the prosecution of the garnishment proceeding arose because the plaintiff in garnishment was a citizen of Massachusetts attempting to evade the laws of his own State, whereas in the case at bar the prosecution of the garnishment proceeding was permanently enjoined as a protection against double liability and harassment of the insurance companies. We submit that this distinction is not material. This Honorable Court did not make its decision in the *Cole* v. *Cunningham* case depend upon the ground on which the court issuing the injunction obtained jurisdiction, but simply upon its having personal jurisdiction and a valid ground for the issuance of injunction. If the institution of the garnishment proceeding in New York actually fixed a lien upon the debt, as claimed by the majority of the circuit court below, the Massachusetts court would have been just as much bound to recognize that lien and to enforce it, even against its own public policy and statutory law, as the Texas court would be bound to recognize and to enforce the Illinois "lien" in violation of its established policy and constitutional and statutory law.

So far as its alleged applicability to the case at bar is concerned, we believe that Judge Hutcheson is entirely correct in his comment on the Sturm case:

"But it is said by the majority that in *Chic. & R. I. Ry.* v. *Sturm*, 174 U. S. 170, it was held that a garnishment proceeding created a lien, and that courts in the state of the exemption must give effect to the lien so created.

"With all due deference, the Sturm case decided no such thing. It was a suit in which a defendant, against whom judgment in garnishment had gone in Iowa, sought to stay the suit of the creditor of the principal defendant in Kansas until the garnishment proceeding could be finally determined. Proceeding in that case upon the erroneous view that the garnishment in Iowa had seized a debt having a *situs* there, because the garnishee lived there, it did hold that in order to save the garnishee double liability he was entitled to a stay of the suit of the principal defendant for the debt after judgment had gone in the garnishment suit: It did not hold, the question was not before it, that a Federal court in the State of the exemption having jurisdiction of both the principal creditor and the garnishing creditor in an interpleader suit filed by the garnishee, would be compelled to recognize an inchoate garnishment proceeding in another State, brought there on a Texas obligation to defeat Texas exemption laws, as superior to the exemptions granted by the laws of Texas. It did not hold that a Federal court having complete personal jurisdiction of two claimants, neither of whom had obtained a judgment, would be bound by the full faith and credit clause, to render a judgment on a Texas contract in favor of one of them, who, contrary to the fundamental public policy of the State of Texas, had resorted to another State to defeat its exemption laws" (R. 237-238).

To this comment we would add that while it is desirable to protect an innocent debtor who is being harassed by two independent suits in different jurisdictions concerning the same debt, as was done in the Sturm case, the necessity for protection by permitting one action to be plead in abate-

ment of the other fails when both plaintiffs are subject to the power of a court of competent jurisdiction in an interpleader proceeding. Under such circumstances, especially, there is no excuse whatever for a rule which makes the filing of a suit on a claim, accompanied by a garnishment proceeding, the equivalent of a judgment awarding to the plaintiff all of the relief asked for by him, thus precluding both the principal debtor and the garnishee from any trial on the merits, and which makes the pendency of such a suit and garnishment, not grounds for abatement to await final judgment, but a requirement that a court of competent jurisdiction in another State must give to such proceeding the effect of such judgment as it thinks that the court in whose jurisdiction the garnishment proceeding was instituted would have rendered.

In this connection, we would point out that the District Court in Texas did not have before it a sufficient record of facts from which it could determine definitely what judgment would have been rendered by the Illinois court. It will be noted that Section 37 of the Illinois Attachment Act (R. 145) provides that all judgments in attachments against the same defendant returnable at the same term shall have, pro rata, according to the amount of the several judgments, in the proceeds of the property attached, either in the hands of a garnishee, or otherwise. This provision has been interpreted by the Illinois Supreme Court in *National Bank* v. *Indiana Banking Company, supra,* as well as in *Reeve* v. *Smith, supra,* as requiring that the fund or debt attached shall be held subject to *pro rata* distribution among all attaching creditors of the same debtor whose writs are returnable to the same term of court. There is no certificate anywhere in the record of this case that no creditors other than Armour had filed attachment suits against Sanders and the garnishee insurance companies, returnable to the same term of court.

In the absence of such certificate, there is absolutely no justification for the judgment of the circuit court awarding the entire funds garnished to the satisfaction of Armour's claim, because there was and is no way for that court to determine from the record before it whether Armour's pro rata share of the garnished fund would have been the entire fund, or one-half of it, or less. We respectfully submit that if the pending garnishment proceeding is to be given any faith and credit at all in Texas, it is not definite enough, as to the amount to be subjected to Armour's claim, to serve as a basis for a suit in Texas. As is pointed out in *Martin* v. *Dryden, supra,* an independent claimant might have intervened and proven himself entitled to the whole of the fund. In *Corbin* v. *Graves, supra,* a creditor of a firm secured a decree in equity against one of the partners, ordering that partner to pay into court a fixed sum for distribution as the court might order. One of the firm's creditors sued that partner on this decree, and the court held that since the decree did not determine what portion of the fund should belong to the plaintiff, the decree was not sufficiently definite to furnish the basis of a suit.

In *Walker* v. *Garland, supra,* Walker brought suit in Texas on an Oklahoma judgment which gave him judgment against the Texas defendant in a fixed sum, which judgment was decreed to be a lien on real estate, subject to a first lien upon which decree of foreclosure was to be rendered in said Oklahoma suit. The order of sale awarded Walker was made subject to the decree which was thereafter to be rendered with reference to the first lien. The court pointed out that this judgment was not final and was too indefinite to be collected by resort to other sources until the mortgaged property was sold and the proceeds thereof credited on that judgment.

We respectfully submit that the court in the Illinois proceeding has not determined what portion, if any, of the indebtedness owed by the insurance companies to Sanders was to be awarded to Armour; that the facts before the district court, as well as the appellate courts in this cause are entirely inadequate for them to determine what final judgment would have been awarded to Armour in Illinois had the case been allowed to proceed there to a finality, and that for this reason, also, the Illinois record is wholly inadequate to establish any claim in favor of Armour to the fund here involved.

The error of the Circuit Court becomes all the more apparent when we consider the fact that a garnishment proceeding is purely a statutory remedy, and that the institution of a garnishment proceeding does not give the garnishing creditor a vested right to the relief which he is seeking, even in his own State. This is well and ably pointed out in an extensive and well-considered opinion by the Supreme Court of Georgia in the case of *Lears* v. *Seaboard Air Line Railway Company, supra,* in which case the garnishing creditor undertook to subject to the payment of his claim wages due to his debtor from an interstate railroad, which wages were earned, due, and payable in North Carolina. Under the Georgia law at the time that the writ of garnishment was served on the railway company, the garnishing creditor had a right to subject such debt to his claim; but after the institution of the suit and service of the writ, a Georgia law took effect saying that the writ of garnishment should not be used to subject wages of persons residing outside of Georgia and there earned. The Supreme Court of Georgia held that this law deprived the plaintiff of all right to foreclose on and to perfect its inchoate lien. The court quoted with approval some language by the Supreme Court of Minnesota with reference to the perfection

of a mechanic's lien in that State. The plaintiff had given notice and filed his petition for a lien, as prescribed by statute, but before the lien had been perfected by judgment the statute was repealed without a saving clause. It was held that the repealing statute was applicable to plaintiff's case, and that his lien was lost, the court saying:

> "The lien of a mechanic, builder, or material man upon a building and real estate does not arise out of his contract, but depends upon a statute alone for its existence. It is a preference which he may secure if he proceeds in a particular way; but if, before he has fully perfected these proceedings, the Legislature sees proper to repeal the law, he really loses nothing. He is merely unable to secure an advantage which, without the statute, he is in no wise entitled to."

The Georgia court further quotes on page 346 a very pertinent excerpt from Rood on Garnishment, Section 11.

> "Inasmuch as garnishment statutes create no new rights or liabilities, and are purely remedial, they are not retroactive when applied to suits commenced after the passage of the act though relative to former transactions. A person does not by commencement of suit under them acquire a vested right to pursue the statutory remedy, and therefore the Legislature may deprive the plaintiff of the benefits of his garnishment by changing or repealing the law at any time before he has reduced it to judgment."

The Georgia court also quotes with approval the following statement from I Lewis' Sutherland on Statutory Construction, page 283:

> "Rights dependent on a statute and still inchoate, not perfected by final judgment or reduced to possession, are lost by repeal or expiration of the statute."

Illinois already has a statute granting to nonresidents in Illinois the same exemption rights as to wages due them

that they are allowed by the statutes of their home States. Bearing in mind the fact that no final judgment has been rendered in Armour's garnishment suit in Illinois, should the legislature of that State pass a law extending such exemption privileges to non-residents to include all exemptions to which they are entitled by the laws of their home States, such law would be an effective bar to the right of Armour to secure any character of judgment against the insurance companies in the Chicago proceeding. In that event we should have the anomalous situation of a Texas court being forced to award a sum of money to an Illinois creditor in violation of its own exemption laws, which the Illinois creditor could not subject to his claim in the courts of his own State.

It seems to us that the bankruptcy cases cited in the opinion of the Circuit Court (R. 225, 230-231) are wholly foreign to the issues in this case. The current Bankruptcy Act provides (Sec. 107-*c*) that a lien created by, or obtained in, or pursuant to any suit or proceeding at law or in equity which was begun against a person within four months before the filing of a petition in bankruptcy by or against such person, shall be dissolved by the adjudication under certain circumstances. By its own terms, this provision does not invalidate a lien obtained under a suit begun more than four months prior to the filing of the petition in bankruptcy, and the courts, as a matter of statutory construction, have ruled that there is no authority given in the Act to enjoin any creditor of the bankrupt from prosecuting his suit begun more than four months prior to the filing of the petition to a final judgment. Under these circumstances a creditor of the bankrupt naturally has a right to prosecute his suit to final judgment and effect unless he is barred by some principle or provision of law other than the United States Bankruptcy Act which does not attempt to interfere in any way with such suit, and such judgment, when obtained, per-

fects the inchoate right obtained through service of the writ of garnishment, and is entitled to full faith and credit.

The record of the Illinois proceeding does show the entry of an interlocutory order of default against Sanders, based not upon personal, but upon constructive service upon Sanders outside of the State (R., pages 115-116). We argued the proposition in our brief in the circuit court that this interlocutory order was not a final judgment (pages 12-16), citing among other authorities the case of *State Bank of Chicago* v. *Thweatt*, 111 Ill. App. 599, which case specifically held that such an order was interlocutory and not final. We feel that we are justified in treating the record of the Illinois proceeding as showing the absence of a final judgment in the case without extensive argument of that point to this Honorable Court, because the majority of the circuit court (R. 225) conceded the fact that the alleged "garnishment lien" was inchoate and subject to defeat if final judgment should fail either as to the main debtor or as to the garnishee.

The record relied upon by Armour in this case as establishing its right to have the funds impounded in Texas awarded to it, is the record of a suit instituted by it in Illinois, seeking the recovery of a personal judgment against the insurance companies, requiring them to pay to Armour the amounts of their respective debts to Sanders. The further prosecution of that suit in Illinois has been permanently enjoined. It should be borne in mind that Armour's suit in Texas was not upon promissory notes executed by Sanders, but upon an alleged Illinois judicial determination that the insurance companies' indebtedness was subject to Armour's claim. This issue was disputed by the insurance companies and was never determined by the Illinois court. As stated by this Honorable Court in *Cole* v. *Cunningham*, *supra*, page 541 of the Law Edition:

"The Constitution did not mean to confer any new power on the States, but simply to regulate the effect of their acknowledged jurisdiction over persons and things within their territory. It did not make the judgments of the States domestic judgment to all intents and purposes, but only gave a general validity, faith and credit to them as evidence. No execution can be issued upon such judgments without a new suit in the tribunals of other States, and they enjoy, not the right of priority or privilege or lien which they have in the State where they are pronounced, but that only which the *lex fori* gives to them by its own laws, in their character of foreign judgments. *And other judicial proceedings can rest on no higher ground.*"

We submit that the district court sitting in Texas had full jurisdiction to determine the ownership of a fund paid into its registry by the insurance companies, according to its own law, and that the fact that a prior action had been instituted in Illinois involving the same subject matter did not, and could not, place any obligation upon a Texas court to apply the remedial laws of Illinois to its decision in preference to the laws of the forum.

**Authorities under Second Assignment of Error.**

Story on Conflict of Laws, 8th Edition, Secs. 556 and 558.

Wharton on Conflict of Laws, Vol. 2, page 1433.

Dicey on Conflict of Laws, 2nd Edition, page 708.

*Scudder* v. *Union National Bank*, 91 U. S. 406, 23 L. Ed. 245.

*Lanahan* v. *Sears*, 102 U. S. 318, 26 L. Ed. 180.

*Bronson* v. *Kinze*, 1 Howard 311.

*Mason* v. *U. S.*, 260 U. S. 545, 67 L. Ed. 396, 43 Sup. Ct. Rep. 200.

*Bank of U. S.* v. *Donnally*, 8 Peters 361, 8 L. Ed. 974.

*Pritchard* v. *Norton*, 106 U. S. 134, 27 L. Ed. 107, 1 Sup. Ct. Rep. 102.

*Vogel* v. *Thiesing*, 55 Fed. (2) 205.
28 U. S. C. A., Sec. 41 (26).
28 U. S. C. A., Secs. 725, 726, 727.
U. S. Equity Rule 23.
*Logan* v. *Goodwin*, 104 Fed. 490, 43 C. C. A. 658.
*Thompson* v. *McConnell*, 107 Fed. 33, 46 C. C. A. 124.
Art. 16, Sec. 50, Constitution of State of Texas.
Art. 3832 R. C. S. Texas.
*Cameron* v. *Fay*, 55 Tex. 58.
*Cole* v. *Cunningham*, 133 U. S. 107, 33 L. Ed. 538.
*Chase* v. *Swayne*, 88 Tex. 218, 30 S. W. 1049, 53 Am. St. R. 742.
*Sorenson* v. *City Nat. Bank*, 49 S. W. (2) 718.

**Argument under Second Assignment of Error.**

On pages 10 and 11 of its opinion (R. 230) the Circuit Court announces as its reason for disregarding the remedial provisions of the Texas law exempting to Sanders the fire insurance proceeds of his homestead the following principle:

> "We do not think the filing of the Federal interpleader and the payment thereunder of the money into the District Court in Texas operated to bring it under the dominion of Texas law. The applicant for interpleader often has a choice of forum, and he cannot at his will subject the rights of the contesting claimants to one set of laws rather than another. The purpose of the interpleader statute was to give the stakeholder protection, but in nowise to change the rights of the claimants by its operation. The interpleader is a suit in equity; and equitable principles and procedure are the same throughout the Federal jurisdiction. The court is to weigh the right or title of each claimant under the law of the State in which it arose, and determine which according to equity is the better. The decision should be the same whether the interpleader is filed in Illinois or in Texas. No one's rights are

> intended to be altered by paying the fund into the court, which as an impartial neutral is to determine them."

We have devoted a great deal of time and research endeavoring to find where the principle of law here announced has ever been urged, contended for, or noticed by any text writer on the subject, or by a prior decision of any court. Counsel for Armour made no such contention to the court. The court cites as authority for the rule only its prior decision of *Vogel v. Thiesing*, 55 Fed. (2d) 205, which we will refer to a little further on. We have examined *Corpus Juris*, Ruling Case Law, L. R. A. and A. L. R., the American Digest Systems and all the text writers available to us in the largest law libraries of Dallas, and have found no mention anywhere of the existence of such a principle of law.

The authorities we have examined negative in the most comprehensive terms the existence of such an exception to the established rule that matters of procedure are to be governed wholly by the law of the forum. In Story on Conflict of Laws, Section 556, the author states:

> "We are next led to the consideration of the question in what manner suits arising from foreign causes are to be instituted and proceedings to be had until final judgment. Are they to be according to the law of the place where the parties or either of them live? Or are they to be according to the modes of proceeding and forms of suit prescribed by the laws of the place where the suits are brought? Fortunately here there is scarcely any ground left open for controversy, either at the common law or in the opinions of foreign jurists, or in the actual practice of nations. It is universally admitted and established that the forms of remedies and the modes of proceeding and the execution of judgments are to be governed solely and exclusively by the laws of the place where the action is

instituted, or, as the civilians uniformly express it, 'according to the *lex fori.*' "

Again, in Section 558, the author states:

> "The doctrine of the common law is so fully established on this point that it would be useless to do more than to state the universal principle which it has promulgated. That is to say, that, in regard to the merits and rights involved in actions, the law of the place where they originated is to govern. But the form of remedies and the order of judicial proceedings are to be according to the law of the place where the action is instituted, without any regard to the domicile of the parties, the origin of the right, or the country of the act."

In Wharton on Conflict of Laws, page 1433, the author says:

> "The third rule announced by the United States Supreme Court in the case of *Scudder* v. *Union National Bank* (91 U. S. 406, 23 L. Ed. 245) namely, that matters respecting the remedy depend upon the law of the place where the suit is brought, is universally conceded."

A still more emphatic statement of the principle is made by the eminent English author, A. V. Dicey, in his work on Conflict of Laws, Second Edition, page 708, wherein he attempts to formulate the underlying principles of conflicts of laws into a series of rules, with comments on each rule, as follows:

> "Rule 193: All matters of procedure are to be governed wholly by the local or territorial law of the country to which a court wherein an action is brought, or, other legal proceeding is taken, belongs (*lex fori*).
>
> In this Digest, the term 'procedure' is to be taken in its widest sense, and includes (*inter alia*)—
>
> (1) Remedies and process; (2) Evidence; (3) Limitation of an action or other proceeding; (4) Set-off or counterclaim.

"Comment: The principle that procedure is governed by the *lex fori* is of general application and universally admitted, but the courts of any country can apply it only to proceedings which take place in, or at any rate under the law of that country. In a body of Rules, therefore, such as those contained in this Digest, which state the principles enforced by an English Court, the maxim that procedure is governed by the *lex fori* means in effect that it is governed by the ordinary law of England without any reference to any foreign law whatever. The maxim is, in effect, a negative rule. It lays down that the high court, in common, it may be added, with every other English court, pursues its ordinary practice and adheres to its ordinary methods of investigation, whatever be the character of the parties or the nature of the cause which is brought before it."

The statements made by the authors quoted above are accepted, recognized, and approved by this Honorable Court in the cases of *Bank of U. S.* v. *Donnally, supra; Scudder* v. *Union National Bank, supra,* and *Pritchard* v. *Norton, supra.*

In view of the unanimity of all of the authorities we have been able to discover on this point, we are at a loss to understand the exception set up by the Circuit Court to the general rule, in the case of interpleader suits. It seems to us that all of the objections urged by Story, in sections following or adjacent to the ones quoted above against the acceptance of any different rule, apply just as forcibly to interpleader suits as to any other character of suit. Particularly objectionable, it seems to us, is the uncertainty which would be cast into the law by the adoption of the rule stated by said court. If a trial court in an interpleader suit has the right to adopt the law of any State which may have any relation to the matter in dispute, and to choose which one of the various conflicting remedies appeals to it as being the more equitable, no party to an interpleader

dispute can tell by what principle of law his property rights will be determined. Surely certainty as to the rule of decision in any given case is to be desired, and this can be accomplished only by applying the remedial laws of the forum to the decision of the case.

The case of *Vogel* v. *Thiesing, supra,* a prior decision of the Circuit Court, is, in our opinion, not an exception to the general rule above referred to. The conflicting laws in that case were not procedural, but substantive, and there is no question but that any court in passing upon substantive rights must apply the law of the jurisdiction or jurisdictions in which those rights arose. The Texas court in that particular instance was merely a forum to determine substantive legal rights acquired under foreign laws with no conflicting procedural remedies involved.

With reference to the Circuit Court's observation that a plaintiff in interpleader often has a choice of forum, we do not see that that should operate as a reason to compel the court of the forum to administer foreign remedies. We would point out, in the first place, that the forum in this instance was not left to the choice of the plaintiffs, but was definitely fixed by Federal law (28 U. S. C. A., Sec. 41 (26)). Plaintiffs do not always like the procedural laws of the forums in which they have to litigate their claims, but they are compelled to resort to them because they are the only jurisdictions within which they can obtain relief. There is nothing unjust about compelling Armour to litigate its claim against Sanders in Texas, because that must have been the forum in which it was contemplated at the time the parties originally dealt together that any claim against Sanders would have to be litigated.

We take it that no citation of authorities is necessary in support of the statement that garnishment proceedings, as well as rights of exemption, are procedural and remedial rights. Section 726 of Title 28, U. S. C. A., expressly pro-

vides that in common law causes in the District Court the plaintiff shall be entitled to similar remedies by attachment or other process against the property of the defendant which are now provided by the laws of the State in which such court is held for the courts thereof. Section 727 makes a similar provision as to rights by execution or otherwise to reach the property of the judgment debtor. Section 725 requires that the laws of the several States be regarded as the rules of decision in trials at common law in the courts of the United States in cases where they apply.

We realize, of course, that this suit originated upon the equity side of the docket. That was true because the relief of interpleader is an equitable remedy. That side of the case, however, has now been terminated, and the question remaining for decision and involved in this appeal is a common law question, *i. e.*, the ownership of a fund of money. Rule 23 of the United States Equity Rules is as follows:

> "Rule 23: MATTERS ORDINARILY DETERMINABLE AT LAW, WHEN ARISING IN SUIT IN EQUITY TO BE DISPOSED OF THEREIN. If in a suit in equity a matter ordinarily determinable at law arises, such matters shall be determined in that suit according to the principles applicable, without sending the case or question to the law side of the court."

After the determination of the strictly equitable question involved in the suit, that is, the right of the plaintiffs to maintain their bill of interpleader, this case resolved down into a suit involving only a common law question, *i. e.*, the prior right of ownership to a fund of money. It seems to us that the provision of Rule 23 requires that this matter be determined according to the law principles and under the provisions of Sections 725, 726, and 727 of the Judicial Code.

There is, however, a well recognized and established rule of law which is stated by Justice Sutherland of this Honorable Court in *Mason* v. *U. S.*, *supra*, as follows:

> "Subject to certain exceptions, the statutes of a State are binding upon the Federal courts sitting within the State, as they are upon the State courts. One of the exceptions is that these statutes may not be permitted to enlarge or diminish the Federal equity jurisdiction. *Mississippi Mills* v. *Cohn*, 150 U. S. 202, 14 Sup. Ct. 75, 37 L. Ed. 1052. That jurisdiction is conferred by the Constitution and laws of the United States and must be the same in all the States. *Neves* v. *Scott*, 13 How. 268, 14 L. Ed. 140. But while the power of the courts of the United States to entertain suits in equity and to decide them cannot be abridged by State legislation, the rights involved therein may be the proper subject of such legislation."

The Justice also quotes with approval the following statement from the circuit court in Independent District of *Pella* v. *Beard*, 83 Fed. 5, 13:

> "It is undoubtedly true that the United States courts sitting as courts of equity have a freedom of action in this respect which they do not possess as courts of common law, and that, as a general proposition, the equity jurisdiction of the Federal courts cannot be limited or restrained by a State (citing authorities). But these decisions relate to the practice, the impairing of jurisdiction, rather than to the determination of the rights of parties after jurisdiction has been acquired."

Continuing, Mr. Justice Sutherland says further:

> "It is urged upon the argument that Section 721 of the Revised Statutes (Comp. St. Sec. 1538), which provides that the laws of the several States shall be regarded as rules of decision in trials at common law in the courts of the United States, by implication excludes such laws as rules of decision in equity suits.

> The statute, however, is merely declarative of the rule which would exist in the absence of the statute (citing authorities). And it is not to be narrowed because of an affirmative legislative recognition in terms less broad than the rule. The rule that an affirmative statute, without a negative express or implied, does not take away the common law (Potter's Dwarris 68; Sedgwick Statutory Construction, 29, 30) affords an analogy."

We would also call the court's attention to a statement by Mr. Chief Justice Taney in *Bronson* v. *Kinzie*, *supra*, in which he holds that where a certain remedy is afforded by State law at the time the contract was entered into, such remedy may not subsequently be impaired as to that particular contract because it would constitute an impairment of the obligation of the contract. He does recognize, however, the right existing in the several States to pass exemption statutes which will be binding on the Federal courts, in equity as well as in law, using the following language:

> "This law gives to the mortgagor and to the judgment creditor an equitable estate in the premises, which neither of them would have been entitled to under the original contract; and these new interests are directly and materially in conflict with those which the mortgagee acquired when the mortgage was made. Mortgages made since the passage of these laws must undoubtedly be governed by them; for every State has the power to prescribe the legal and equitable obligations of a contract to be made and executed within its jurisdiction. It may exempt any property it thinks proper from sale for the payment of a debt, and may impose such conditions and restrictions upon the creditor as its judgment and policy may dictate. And all future contracts would be subject to such provisions, and they would be obligatory on the parties in the courts of the United States, as well as in those of the State."

If the circuit court intended to hold that a Federal *equity* court sitting in Texas was not bound by the exemption provisions of the Texas Constitution and statutes as interpreted by the Supreme Court of Texas, it seems to us that the case of *Lanahan* v. *Sears, supra,* is a direct and, positive authority to the contrary. In that case Sears, a resident of Texas, had given an absolute deed to his homestead, which deed, however, was intended as security for a debt. Under the decisions of the Texas Supreme Court this was construed as a mortgage, and since the homestead exemption could not be waived, was invalid. Lanahan sued Sears in the United States Circuit Court in ejectment, and Sears then filed his suit in the United States Circuit Court in equity, asking that Lanahan be enjoined from further prosecution of his suit. This Honorable Court held that a Federal equity court sitting in Texas was as much bound to enforce the exemption provisions of the Texas Constitution as construed by its Supreme Court as any State court of Texas would be. It seems to us that this is a direct holding applicable to the case at bar, and that under it the District Court for the Eastern District of Texas was bound to give effect to the Texas exemption law covering the proceeds of appellee's homestead.

We believe the authorities cited make clear the proposition that while Texas cannot by any State statute affect the class of cases which come under the general jurisdiction of a United States equity court, insofar as any Texas statute does not conflict with the United States Constitution or with the rules defining jurisdiction of a United States equity court, it is binding on such court stting within the State of Texas, whether such court be sitting as a court of law or equity. As is pointed out in one of the cases cited, it would indeed be anomalous that a Texas citizen should be entitled to insist upon his homestead exemption

in his State court or in the Federal court at common law, but have no such right in a Federal court of equity.

We submit that under the decision of this Honorable Court in *Cole* v. *Cunningham, supra,* the Federal court, sitting in Texas, and bound as it was to enforce the exemption laws of that State as construed by its highest court, was not obligated to give to the Illinois garnishment proceeding the right of priority to which it would have been entitled in Illinois, but only such right of priority as it was entitled to under the remedial laws of Texas; and that under the Texas laws such writ of garnishment was not effective to create a lien upon, or any right in and to the fire insurance proceeds of the homestead and household goods of appellee W. D. Sanders. *Chase* v. *Swayne, supra; Sorenson* v. *City Nat. Bank, supra.*

**Authorities under Third Assignment of Error.**

*Holden* v. *Stratton,* 198 U. S. 214.
*Chase* v. *Swayne,* 88 Tex. 218.
*Ketcham* v. *Ketcham,* 269 Ill. 584.
*Reames* v. *Morrow,* 193 Ill. App. 155.
*Sawyer Mfg. Co.* v. *Fleming,* 58 N. W. 226.
*Strawn* v. *First National Bank,* 279 S. W. 474.
*Jackson* v. *Republic,* 141 Ill. App. 453.
*Baltimore & Ohio R. R.* v. *McDonald,* 112 Ill. App. 391.
*Steele* v. *Buel,* 104 Fed. 972.

**Argument under Third Assignment of Error.**

In asking this Honorable Court to issue the writ of certiorari prayed for herein, we are relying principally upon our first and second assignments of error. It is our view that the decision of the effect to be given to the record of a garnishment proceeding instituted in one State and the prosecution of which has been permanently enjoined

prior to the rendition of final judgment therein, is one of the utmost importance, and that no circuit court decision enunciating an incorrect decision of this important question should be permitted to stand with the implied approval of this Honorable Court. We do not believe that the full faith and credit clause ever contemplated the interpretation placed upon it by the majority of the circuit court requiring that a Federal court in an interpleader case be compelled to give to a suit instituted in another State the effect of such final judgment as the Federal court believes would probably have been rendered in that suit under the laws of that State, had it been permitted to go to final judgment there, despite the fact that the rendition of such judgment is contrary to the established policy and laws of the forum.

In our view, the statement that the court in an interpleader case may reject the established remedial law prescribed by the proper legislative authority of the State in which it is sitting in favor of the remedial rights accorded to the parties by the law of a foreign State, if in the personal opinion of the judge presiding the foreign remedial law is more equitable, is particularly pernicious. It is, in plain fact, an attempt by the court to usurp the province of the Legislature, and to set itself above the law which it is its official duty to enforce. The dual character of our Federal judicial system authorizes no such disregard of the sovereign laws of the State. In our view it is immaterial to a proper decision of this case whether the position of Armour in seeking to evade the Constitutional and Statutory exemption laws of Texas is more equitable than the position of Sanders in claiming the benefit of the exemptions accorded to him by the law of his native State. We cannot pass unchallenged, however, the principle necessarily implied in the majority decision that the policy of

Congress is opposed to the protection of exemption rights granted to their citizens by the respective States. In this connection, we cannot do better than to quote from the dissenting opinion of Circuit Judge Hutcheson (R. 233-234).

> "To the view implicit in the opinion, that the Texas homestead exemption laws are too liberal, and because too liberal the Federal courts justly deny them effect, I oppose not only the observation that it is for Texas alone to determine the level of domestic peace and security which the genius of the State requires and to fix its exemptions accordingly, but the observation that 'It has always been the policy of Congress, both in general legislation and in bankrupt acts, to recognize and give effect to State exemption laws.' *Holden* v. *Stratton*, 198 U. S. 214. In that case it was said: 'This was cogently pointed out by Circuit Judge Caldwell, in delivering the opinion in *Steele* v. *Buel*, 104 Fed. 972, where he said: 'From the organization of the Federal courts under the judiciary act of 1789, the law has been that creditors suing in those courts could not subject to execution property of their debtor exempt to him by the law of the state.' * * * The same rule has obtained under the bankrupt acts which have sometimes increased the exemption, but have never lessened or diminished them. An intention on the part of Congress to violate or abolish this wise and uniform rule, observed from the creation of our Federal system, should be made to appear by clear and unmistakable language.'
>
> "To the view announced by the majority, that exemptions are matters of local law, having in themselves no extra territorial effect, and that they will not ordinarily be enforced in States other than that of their creation, I oppose the settled policy of substantially all the States to insure, by statute and decision, the exemption from seizure for debt of the home and the proceeds of insurance policies on it (*Chase* v. *Swayne*, 88 Tex. 218; *Ketcham* v. *Ketcham*, 269 Ill. 584) and the modern view that comity requires that exemptions allowed in a State be not defeated by suits brought in

another State to avoid them. *Reames* v. *Morrow*, 193 Ill. App.; *Sawyer Mfg. Co.* v. *Fleming*, 58 N. W. 226; *Strawn* v. *First National Bank*, 279 S. W. 474; *Jackson* v. *Republic*, 141 Ill. App. 453; *Baltimore & Ohio R. R.* v. *McDonald*, 112 Ill. App. 391."

If the venue of the interpleader suit in question had been fixed in the State court of Texas, can it be doubted that such State court would have felt entitled and obligated to protect the exemption rights accorded to its citizens by its sovereign law? Is a Federal court sitting in Texas any less bound and obligated to enforce the laws and public policy of the State of the forum? When Armour extended credit to Sanders, it did so with full notice of the fact that it could not, under any normal circumstances, expect to appropriate the homestead and household goods of Sanders to the satisfaction of its claim. It was perfectly satisfied to extend credit to him and to take his note, payable in Texas, upon this basis. We can see no injustice in confining Armour to the enforcement of the remedial rights which were in contemplation at the time the debt in question was created. On the contrary, it seems to us that justice demands that Sanders be protected in the exemption rights accorded to him by the laws of his native State, and which were impliedly agreed to by Armour at the time that it first contracted with him.

## Conclusion.

We believe that the majority decision of the Circuit Court is admittedly in violation of the provisions of 28 U. S. C. A. Sec. 687, in that the circuit court expressly gave to the incomplete garnishment proceeding in Illinois a greater effect than was given to it by the established law and usage of that State, on the plea that the Supreme Court of Illinois had incorrectly interpreted the law of that State, and that the circuit court had the right to place its own inter-

pretation upon the law of Illinois in preference to accepting the interpretation of the Illinois Supreme Court. In its holding that the institution of a garnishment suit is the equivalent of a final judgment awarding to the garnishing plaintiff all the relief sought by him in such suit, and that it must be recognized and enforced as such in the courts of a sister State, even though it be in violation of the public policy and laws of such sister State, the decision is squarely in conflict with the prior decision of this Honorable Court in *Cole* v. *Cunningham, supra.*

In the right asserted by the majority of the circuit court to disregard the sovereign laws of the State in which the district court is sitting, whenever the individual judge sitting as such court may consider such sovereign laws to be inequitable, the decision is revolutionary, wholly without precedent, and dangerous in the extreme. We respectfully submit that it is highly important that the erroneous principles of law asserted in the majority opinion be rejected by this Honorable Court, and that this Honorable Court issue the writ of certiorari prayed for in plaintiff's petition herein to that end.

THOS. D. GRESHAM,
*Dallas, Texas,*
*Attorney for Petitioner.*

WINFREY & LANE,
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*Dallas, Texas,*
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

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# No. 106

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W. D. SANDERS, PETITIONER,

*vs.*

ARMOUR FERTILIZER WORKS AND NATIONAL FIRE INSURANCE COMPANY.

---

## SUPPLEMENTAL BRIEF OF PETITIONER W. D. SANDERS.

---

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# SUPREME COURT OF THE UNITED STATES

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## SUPPLEMENTAL BRIEF OF PETITIONER W. D. SANDERS.

The answer of Armour Fertilizer Works to our petition, as we construe it, does not attempt to justify the reasoning of the Circuit Court of Appeals below in rendering judgment for it, so much as it attempts to assert that a correct result was reached. Without attempting at this time to make an exhaustive reply to Armour's contention, which should be developed fully upon a hearing on the merits of the case, we wish to point out that, as we see it, none of the reasons given in our original petition as grounds for the issuance of the writ of certiorari prayed for herein has been refuted. These reasons are:

1. It is important that this Honorable Court determine, once and for all, the effect of an inchoate garnishment proceeding, further prosecution of which has been permanently

enjoined prior to final judgment. The Federal Interpleader Act is of comparatively recent enactment. In *Cole* v. *Cunningham* this Honorable Court determined that such a proceeding was not entitled to full faith and credit where the court enjoining its prosecution obtained its jurisdiction to do so by reason of its control over a citizen of the same State. Is the result to be any different where jurisdiction for injunction is conferred by the Federal Interpleader Act? In other words, is the effect to be given to an inchoate proceeding to depend on the reason for which it was stopped, rather than on its own finality and merit so far as prosecuted? This question will doubtless arise many times in the future, and a controlling precedent should be set up by this Honorable Court to avoid further useless expense and litigation.

2. The Circuit Court said, in effect, that in an interpleader suit a Federal District Court may, at its option, disregard the procedural laws of the forum. This assertion is in our judgment very dangerous and wholly without precedent. Armour has made no attempt to defend it. Counsel did say, in the third paragraph of their answer, that they denied that a Federal District Court sitting in Texas in an interpleader action was to be regarded as a Texas court. They cited no authority and made no argument in support of that position. The position is clearly untenable and we submit that this Honorable Court should not permit this statement of the Circuit Court to stand in the records with the tacit approval of this Honorable Court.

3. The Circuit Court held, in effect, that the Federal Courts had the right to disregard the interpretation placed upon Illinois law by the Supreme Court of that State, and to substitute therefor its own interpretation of such law. This statement is likewise contrary to established authority and should be rejected by this Honorable Court.

4. It is important that this Honorable Court clarify, once and for all, the true character of a garnishment proceeding, making it clear that such proceeding is not strictly a proceeding *in rem*, but is a proceeding *in personam* with jurisdiction dependent not upon any fictitious situs of a debt, but upon the court's getting personal jurisdiction over the debtor.

It is not our purpose to undertake in this answer to reply fully to all of Armour's contentions, but we do wish to point out certain premises and interpretations of the facts of this case made by Armour which to our mind are clearly erroneous.

The major contention urged by Armour in support of their alleged right to the interpleaded fund is that the default order assessed against Sanders in the Illinois Court was a final judgment. It cannot be said that this is urged in support of the judgment below, because even the majority of the Circuit Court expressly found that such default order was not a final judgment (Opinion, page 4). In fact, Armour does not even venture to assert in unqualified terms to this Honorable Court that the judgment is final. Their statement as to its alleged finality is always qualified by some such expressions as "for the purpose of attachment and garnishment action," or "as between Armour and Sanders." The question is not whether the Illinois proceeding had reached a stage where that court would not have permitted Sanders (who was not personally before the court) to come in and defend his rights, but whether it had rendered a *final judgment* in the case. We did not argue this point to this Honorable Court in our original brief herein further than to point out that the Circuit Court conceded that the judgment was not final, and to refer very briefly to some of the authorities on the point. It is clear from the record that the Illinois court did not have personal jurisdiction over Sanders, and hence that the default

order could not be binding as a personal judgment. The Illinois court had caused a writ of garnishment to be issued against the insurance companies, but on September 19, 1927, when this default was ordered against Sanders, the answer of Hartford Fire Insurance Company was on file (record pages 107-110) admitting it had issued policies to Sanders and that there had been a fire, but denying that it owed any money to Sanders. The National Fire Insurance Company did not answer until June 27, 1928, at which time it admitted an adjustment of the dispute between it and Sanders as to its liability and admitted a debt of $3,400 to Sanders, but plead that that debt was exempt from garnishment. On the same date (June 27, 1928) Hartford Fire Insurance Company amended its answer and admitted their indebtedness of $4,250, which sum it also claimed was exempt. It is true that Sanders stipulated (Record, page 86) that Sanders' homestead exemption would not have been recognized by the Illinois court as a good defense to the garnishment suit. From this Armour argues that it was the duty of the Texas court to render the same judgment on the record before it that the Illinois court would have rendered. To this we reply that there was no duty on the Texas court to try the case according to Illinois law. On the contrary, the Texas court was bound to apply Texas law to its decision. However, even if the Texas court had wanted to try the case on the Illinois record, it did not have sufficient data upon which to do so. It did not know what other attachments, if any, were returnable to the same term of the Illinois court. Again, as we have pointed out in our brief, the institution of a garnishment proceeding did not confer upon Armour a vested right to a final judgment thereon, even in Illinois. We refer the court to pages 33-35 of our original brief.

Without replying further here to Armour's argument that the default against Sanders was a final judgment, we

refer the court to pages 9-19 of our brief in the Circuit Court of Appeals. In comment, however, upon the quotation set out on page 12 of Armour's brief from the case of *State Bank of Chicago* v. *Thweatt*, 111 Ill. App. 599, which quotation counsel concludes with the sentence: "Such a judgment was not a final one in the sense that the original attachment cause was disposed of, but only final as to the defendant to the extent stated, and was not final as to the garnishee," we would call the court's attention to the concluding sentence of the paragraph from which this quotation was taken, reading as follows:

> "Its finality *all* depended upon facts thereafter to be shown which establish the court's jurisdiction to proceed to *final judgment*."

In view of the controlling effect of the last sentence over the whole paragraph and of its adverse effect upon Armour's contention, it seems to us that counsel would have been fairer to this Honorable Court, as well as to the Court quoted from, had they completed the quotation.

We are not sure that we understand counsel's statement on page 5 of their brief reading as follows:

> "It was stipulated at the trial of the instant case (R. 86) that the Texas exemption law was no bar in Illinois to the binding effect of the Illinois judgment on the insurance credits attached."

We have never conceded that there was an Illinois judgment binding on the insurance credits attached.

Counsel is also mistaken as to our conceding that, if Armour's Illinois judgment were final, the insurance money should properly be awarded to Armour. In our petition to this Honorable Court we stated (page 7) that we believed that the decision of this Honorable Court in *Cole* v. *Cunningham*, 133 U. S. 107, 33 L. Ed. 538, reading in part as follows:

> "The Constitution did not mean to confer any new power on the States, but simply to regulate the effect of their acknowledged jurisdiction over persons and things within their territory. It did not make the judgments of the States domestic judgment to all intents and purposes, but only gave a general validity, faith and credit to them as evidence. No execution can be issued upon such judgments without a new suit in the tribunals of other States and they enjoy, not the right of priority or privilege or lien which they have in the State where they are pronounced, but that only which the *lex fori* gives to them by its own laws, in their character of foreign judgments."

was applicable to the case at bar. We believe that the default order against Sanders at best is only entitled to such remedies as are allowed by the law of the forum (Texas) and not to the remedies allowed by the law of Illinois.

In commenting upon counsel's argument that Sanders is seeking to avail himself of the rights of the garnishees rather than his own rights, we reply that it was the duty of the garnishees if they wished any Illinois judgment to be a protection to them, to plead in Illinois that the funds sought to be garnished were exempt to Sanders as proceeds of his homestead, 28 *C. J.* 399. The garnishees did set up this defense, and that defense has never been passed upon by the Illinois court. What the Illinois court would have done had the case come on for final determination is immaterial. As we have pointed out, the Texas court was not bound by Illinois law, and did not even have the complete Illinois record before it. Armour is asking, not merely that the Texas court decide a Texas lawsuit according to Illinois law, but also that it speculate as to what facts would have been presented to the Illinois court.

We do not believe that a bankruptcy case such as *Metcalf v. Barker*, cited by Armour, has any applicability to the case at bar. The bankruptcy act does not undertake to in-

validate a lien or a garnishment proceeding which has been instituted prior to bankruptcy, even though it be completed after bankruptcy. Neither this case nor the case of *King* v. *Cross*, so strongly relied on by Armour, furnishes any authority for the proposition that an inchoate garnishment proceeding, which can never be prosecuted to final judgment, is entitled to recognition in Texas as a final judgment.

We are not confused, as suggested by Armour, by the distinction between the creation and the enforcement of liens. Our position is that a lien is not created by filing suit, nor is any vested right acquired by the institution of a garnishment proceeding. The right acquired by the institution of such suit is only inchoate, and does not become perfected—it is not created—until it has been prosecuted to final judgment. As we have pointed out on page 33 of our brief herein, the perfection of such right may be defeated in several different ways before it has finally vested.

We are unable to understand Armour's position in arguing to this Honorable Court on page 33 of its brief that the executory waiver of exemption contained in the notes sued upon in Illinois (Record, page 90) should be construed as a waiver of his right to claim that the fire insurance proceeds of his homestead were exempt from garnishment under Texas law. The Constitution of the State of Texas, Article 16, Section 50, expressly provides:

> "No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money therefor, or improvements made thereon, as hereinbefore provided, whether such mortgage, or trust deed, or other lien, shall have been created by the husband alone, or together with his wife; and all pretended sales of the homestead involving any condition of defeasance shall be void."

In view of this mandatory Constitutional provision, which is well known to practically every Texan, whether lawyer

or layman, we do not understand how Armour can argue on page 31 of its brief that Sanders must be held to have expressly waived and renounced his homestead exemption. There is no contention that Sanders has done anything after the fire indicating any intention or willingness on his part to waive his right to have the insurance proceeds exempt from attachment. Certainly it is a far cry to undertake to give to the promissory note executed in 1926 the effect of a waiver of exemption of insurance money on the homestead when Sanders did not have the legal capacity to waive his homestead exemption at that time. In 25 *Corpus Juris* 111, the statement is made:

> "It is a rule, nearly universal; based on reasons of public policy, that a debtor's waiver of his exemption right, by stipulation of an executory contract, is absolutely void."

We do not find that the question has ever come up for decision in an appellate court in Texas, which is not surprising in view of the express mandatory language of the Constitution.

Our surprise at this concluding argument of Armour is all the greater when we contrast it with the admission contained on page 28 of Armour's brief:

> "In so far as concerns the controversy in the instant case, it may be conceded that the Texas exemption law is a bar to the successful prosecution of a garnishment action against the insurance credits within the State of Texas;".

We believe that the majority of the Circuit Court, who were not familiar with the utter impossibility of an executory waiver of homestead exemption in Texas, were possibly subconsciously influenced against the merits of Sanders' position by this argument about a waiver, even though it was wholly untenable. We can see no other reason for

its inclusion in the brief to this Honorable Court than the hope of possibly a like effect.

In conclusion, we respectfully submit that for the reasons stated in our original petition, this Honorable Court should grant the writ of certiorari prayed for therein, and that upon final hearing hereof it should reverse the judgment of the Circuit Court of Appeals, and affirm the judgment of the District Court.

Respectfully submitted,

THOS. D. GRESHAM,
*Attorney for W. D. Sanders.*

WINFREY & LANE,
ALVIN H. LANE,
*Of Counsel.*

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933.

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# No. 106

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W. D. SANDERS, PETITIONER,

*vs.*

ARMOUR FERTILIZER WORKS AND NATIONAL FIRE INSURANCE COMPANY.

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## REPLY OF W. D. SANDERS TO ATTACK OF ARMOUR FERTILIZER WORKS UPON JURISDICTION OF DISTRICT COURT IN THIS CASE.

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We have just been furnished with copy of an additional argument of Armour Fertilizer Works in this case, titled: "Suggestions Concerning Question of the Jurisdiction of the District Court Below." As this is the first time that this question has been raised before this Honorable Court, we feel justified in replying briefly thereto.

As we interpret this argument, it is not based on the proposition that the District Court had no inherent jurisdiction to try an interpleader case, which question possibly could be raised at any time, but upon the contention that as a matter of fact the claims of Armour and Sanders are not adverse, and therefore the bill of interpleader should never have been allowed. We do not see how there

can be any question that the contention in this form is wholly without merit. Armour made the same contention in the first trial of this cause, which contention was sustained by the District Court, but on appeal the judgment of the District Court was reversed and the cause remanded, with instructions that the bill of interpleader be allowed. The Circuit Court on this appeal said (38 Fed. (2) at 214): "We think that the facts in this case show that the District Court is mistaken in concluding that the claims of Armour and Sanders are not adverse." No further appeal was taken from this judgment of the Circuit Court, and surely it must be conclusive of the question of fact therein adjudicated.

Not only is this true, but also, as was pointed out by the insurance companies in their brief in the Circuit Court of Appeals on this appeal, when the cause was remanded the District Court then entered an order of September 14, 1931, sustaining the bill of interpleader (Tr. 74). No writ of error or appeal was taken from that order by Armour within three months of that date, and it seems to us that Title 28, Section 230, U. S. C. A., providing: "No writ of error or appeal intended to bring any judgment or decree before a Circuit Court of Appeals for review shall be allowed unless application therefor be duly made within three months after the entry of such judgment or decree," is conclusive of this point.

The brief of the insurance companies filed in the Circuit Court of Appeals points out in detail the fact that Armour's attempted appeal from the order of the District Court allowing the bill of interpleader has not been legally perfected, and also covers a little more fully than is done here the point that the right of the insurance companies to the bill of interpleader is *res adjudicata*.

As a matter of logic, we have never been able to see any merit to the contention that Armour and Sanders are not

adverse in their respective claims against the insurance companies. As is pointed out by the Circuit Court of Appeals, each is claiming the proceeds of the policies to the exclusion of the other.

The fact that Armour Fertilizer Works is claiming that it has the right to collect Sanders' claim against the insurance companies, whereas Sanders denies that Armour has any such right, does not to our mind make their claims harmonious. That is the essence of their disagreement. So far as the insurance companies were concerned, they were faced with the possibility of two distinct lawsuits in different jurisdictions, which certainly meant double vexation and possibly double liability. Even if the question were not concluded as a matter of law, we can see no question but that the insurance companies were entitled to their bill of interpleader in this case.

Incidentally, we are interested in the statement made by Armour on page 3 of their second brief that they do not contend that the money on deposit with the District Court below belongs to Armour, but simply that Armour has a lien upon it which it is asking the Texas court to enforce. It seems to us that this lends force to our argument under our second assignment of error that the holder of a foreign judgment is not entitled to the remedies allowed him by the law of that state on such judgment, but is only entitled to the remedies allowed him by the law of the forum. In this connection, we again call the court's attention to the quotation from *Cole* v. *Cunningham*, 133 U. S. 107, 33 L. Ed. 538, set out on page 37 of our original brief, reading in part as follows:

> "No execution can be issued upon such judgments without a new suit in the tribunals of other states, and they enjoy, not the right of priority or privilege or lien which they have in the state where they are pronounced, but that only which the *lex fori* gives to them

> by its own laws, in their character of foreign judgments. And other judicial proceedings can rest on no higher ground."

Since Armour has now made it clear that it is asking the Texas court to grant it a remedy, *i. e.*, enforcement of an alleged lien upon property which, under the Texas law, is exempt from such remedy, we submit there can be no question but that such remedy should be denied by the Texas court, and Sanders' right to have the fund in question exempt to him against Armour's alleged claim should prevail, whether the default order entered against Sanders in Illinois be regarded as a final judgment, as contended for by Armour, or as merely an interlocutory order, as it was found to be by the Circuit Court of Appeals.

We do not understand that Sanders is in any delinquency before this Honorable Court by reason of the provisions of Rule 27. Rule 27 in its logical sequence follows the prior rules dealing with an appeal. Rule 38, providing for a review on writ of certiorari, comes after Rule 27, and it requires that a brief be filed by petitioner, accompanying his petition for a writ. We find no requirement for any other brief to be filed by petitioner, and as we had undertaken to cover the affirmative of our position in that brief, and especially since we have been allowed this appeal *in forma pauperis* and are unable to have any additional arguments printed, we have endeavored to confine any further argument before this Honorable Court to as brief a statement as possible.

Since we are submitting the case on brief, however, and without oral argument, we do wish to reply to two or three points raised in Armour's original brief which we did not cover in our reply filed prior to the granting of the writ.

Armour has attempted to distinguish several of the Illinois cases, such as *Lancashire Insurance Co.* v. *Corbetts*,

165 Ill. 592; *Becker* v. *Ill. Central Ry. Co.*, 250 Ill. 40; *Bigelow* v. *Andress*, 31 Ill. 322, and *McElwee* v. *Wilce*, 80 Ill. App. 338, by commenting upon the parties who were before the court, and by implying that the unqualified language used by the courts, in holding that the mere pendency of a garnishment suit, prior to the rendition of a final judgment therein against the garnishee, is entitled to no faith and credit in the courts of another state, and in holding that the service of a garnishment writ creates no lien upon any moneys or property in the hands of the garnishee, should be interpreted by this Honorable Court as though containing the qualification, "as between plaintiff and garnishee." We submit that the Illinois courts knew the effect of their language, and had they intended to qualify their statements they would have done so. We believe that the cases cited fully sustain the proposition for which they were cited by Sanders.

We would also point out, although it may seem superfluous, that the right of Sanders to have the insurance money exempt to him did not require that he file suit in order to perfect it: his right of exemption arose simultaneously with the debt, and antedated any right of any character in and to the fund in controversy subsequently claimed by Armour. The situation is not comparable in any way to a case of two garnishments in which the prior in point of time is entitled to priority in payment, and the fact that the interpleader statute fixed the venue of the interpleader suit at the residence of the assured, and thereby incidentally secured to him the benefit of the exemptions allowed him by the state of his domicile, furnishes no just ground of complaint to Armour.

This is all the more true because, as we have pointed out in our original brief, it is apparent from the facts of this case that the suit was filed by Armour in Illinois, rather than in Texas, the State where the notes sued on were

given and by their terms were payable, for the express purpose of evading the Texas exemption laws. We respectfully differ with Armour's statement on page 22 of their brief that there are no circumstances in the record from which may be inferred even a suspicion that Armour was attempting to evade the Texas exemption laws. The notes sued upon by Armour (Tr. 89) show that they were made payable to the order of Planters Fertilizer & Chemical Company, New Orleans, La. (owned and operated by Armour Fertilizer Works). The notes were also payable in Tarrant County, Texas. The notes do not show to have been endorsed by Planters Fertilizer & Chemical Company to Armour Fertilizer Works, nor is the exact character of that company made clear. The suit was filed (Tr. p. 89) in the name of Armour Fertilizer Works, a corporation, trading as Planters Fertilizer & Chemical Company. There is something suspicious in this entire set-up. Obviously Planters Fertilizer & Chemical Company was set up as some character of an organization with a principal office in New Orleans, and with some character of an office in Fort Worth, Tarrant County, or that city would not have been designated as the place of payment in the notes. It seems to us that the notes were not endorsed by the Planters Company to Armour because that would have been too open an admission that the transfer was made for the purpose of evading Texas laws. The attorneys preferred to assume that Armour Fertilizer Works was the payee of the notes and filed suit on that assumption in Chicago. It does not seem to us to be an accident that notes which were taken by the Southern subsidiary of Armour, with a city in Texas designated as the place of payment, should have been sent up to Illinois for suit and garnishment on homestead insurance money which would have been clearly exempt in Texas. Armour knew that the insurance companies upon whom the garnishment was run were doing business

in Texas and were available for garnishment there, because the property covered by the policies was situated in Texas. We submit that the record in this case shows as clearly as circumstantial evidence can ever show, that the notes in question were sent up to Illinois for suit there for the express purpose of evading the Texas exemption laws, and we submit further that it was the duty of the United States District Court, sitting in Texas, as a Texas court, to protect a Texas citizen against this attempted evasion of the laws of his domicile.

For the reasons stated, we respectfully request that this Honorable Court reverse the judgment of the Circuit Court of Appeals and affirm the judgment of the United States District Court in this case.

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*Attorney for Petitioner.*

Winfrey & Lane,
Alvin H. Lane,
*Dallas, Texas,*
*Of Counsel.*

(4522C)

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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1933.

No. 106

W. D. SANDERS, PETITIONER,

*vs.*

ARMOUR FERTILIZER WORKS AND NATIONAL FIRE INSURANCE COMPANY.

**ANSWER AND BRIEF OF ARMOUR FERTILIZER WORKS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.**

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1933.

No. 106

W. D. SANDERS,
*Petitioner,*

*vs.*

ARMOUR FERTILIZER WORKS AND NATIONAL FIRE INSURANCE COMPANY,

ANSWER AND BRIEF OF ARMOUR FERTILIZER WORKS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

## ANSWER.

Armour Fertilizer Works, a corporation, respondent herein, in answer to the petition for writ of certiorari which was filed in this Honorable Court at the October Term, 1933, respectfully shows:

I. It denies that the judgment rendered by the Municipal Court of Chicago in favor of Armour Fertil-

izer Works, respondent herein, and against W. D. Sanders, petitioner herein, was an interlocutory judgment as alleged by petitioner, and says that under the laws of the State of Illinois for the purposes of attachment and garnishment action, said judgment was final and conclusive as between petitioner and this respondent, being entered by a court of competent jurisdiction after service of notice on the defendant (petitioner herein) and publication in accordance with the laws of the State of Illinois, after a hearing of evidence and an assessment of damages by the court, and was a judgment on which the plaintiff (respondent herein) was entitled to have execution issue against the credits attached. (R. 115-116.)

II. It denies that it resorted to the courts of a state other than Texas in order to defeat the exemption laws of Texas, as alleged by petitioner, and says that the record shows it to be an Illinois corporation, with its principal office and place of business in Chicago, Illinois (R. 193); that the action in connection with which the writs of garnishment were issued was instituted in a court of the plaintiff's (respondent's) domiciliary state, on negotiable promissory notes executed by W. D. Sanders, petitioner herein, in which notes the said W. D. Sanders waived and renounced for himself and family any and all exemption rights under or by virtue of the Constitution or Laws of the State of Texas or any other state. (R. 89-97.)

III. It denies that a Federal District Court sitting in Texas and hearing an interpleader action instituted by fire insurance companies, garnishees, under 28 U. S. C. A. 41 (26) as rewritten by the Act of May 8, 1926, is to be regarded as a Texas court and bound to give full force and effect to the exemption laws of the State of Texas, as against rights previously acquired

by an attaching creditor in the State of Illinois, especially where, as in this case, such attaching creditor was domiciled in Illinois and was enjoined from enforcing its Illinois judgment by an injunction issued out of the United States District Court in Texas and sent to and served by the United States Marshall for the Northern District of Illinois on respondent in the State of Illinois.

IV. This litigation grew out of an action instituted by Armour Fertilizer Works, respondent, against W. D. Sanders, petitioner, in the Municipal Court of Chicago, at Chicago, Illinois, based upon several promissory notes executed by Sanders, payable to respondent, aggregating $7,589.81. (R. 88-100.) The National Fire Insurance Company and Hartford Fire Insurance Company, both having offices and agents in Chicago, were made garnishees and were served with process in Illinois. (R. 103-106.) Service was made on Sanders through the mailing of notice to him by the clerk of the Municipal Court of Chicago and also by publication of such notice in accordance with the Illinois statute. (R. 111-114.) Following the period required for publication, Sanders not appearing, an order of default was entered against him for want of appearance, whereupon the Illinois court heard the evidence, made a finding of $7,589.81 due the plaintiff, assessed the plaintiff's damages in that sum, and entered final judgment for that amount upon which judgment the issuance of execution was ordered. (R. 115-116.) Under the law of Illinois (Section 35 of the Attachment Act), it is provided that:

> "* * * such judgment shall bind, and a special execution shall issue against, the property, credits and effects attached, and no execution shall issue against any other property of the defendant * * *" (R. 145.)

Both garnishees answered in the Illinois proceeding admitting indebtedness to Sanders (R. 117-132), but before plaintiff (respondent herein) had judgment entered against the garnishees, the interpleader actions were filed in the United States District Court in Texas, which court enjoined respondent from further proceedings with its action in Illinois. Respondent thereafter appeared in the interpleader action in Texas, asserting that its garnishment action and judgment against Sanders in the Municipal Court of Chicago entitled it to the proceeds of Sanders' insurance as against his claim of homestead exemption. (R. 29-56.) The District Court awarded the insurance to Sanders (R. 200-201), but this judgment was reversed by the Circuit Court of Appeals, which awarded the insurance to respondent. (R. 222-231, 239-240.)

On the trial of the interpleader action in the District Court, it was stipulated by petitioner and respondent that the sums of money payable to petitioner under said insurance policies were due at the time of the institution of respondent's action in the Municipal Court of Chicago and at the time of the service of the garnishment writ upon the garnishees there, and also that under the laws of Illinois the Texas homestead exemption of W. D. Sanders would not be a good defense in the garnishment suits. (R. 86.)

Wherefore respondent prays that said petition for writ of certiorari be dismissed with costs; and this respondent will ever pray, etc.

ARMOUR FERTILIZER WORKS,
By CHARLES J. FAULKNER, JR.,
Chicago, Illinois.

## BRIEF AND ARGUMENT.

### PRELIMINARY STATEMENT OF THE QUESTIONS IN CONTROVERSY.

Prior to the institution of this interpleader action in the Federal Court in Texas, Armour Fertilizer Works, an Illinois corporation, recovered a judgment against W. D. Sanders, a citizen of Texas, in a court of competent jurisdiction in the State of Illinois, which judgment exceeded the amount of the insurance money in controversy in the Federal Court action. (R. 85.) Hereafter we shall refer to the parties simply as Armour and Sanders.

Under the Illinois law, Armour's judgment against Sanders at once became binding upon the insurance credits attached there. (R. 145.) Those same credits, now represented by the money itself, are claimed by Sanders in the instant case, in total disregard of Armour's prior judgment. It was stipulated at the trial of the instant case (R. 86) that the Texas exemption law was no bar in Illinois to the binding effect of the Illinois judgment on the insurance credits attached. The Circuit Court of Appeals held that the Illinois garnishment proceeding, which as against Sanders was conclusively binding upon the insurance credits attached in Illinois, must be given the same force and effect in this controversy between Armour and Sanders in the Federal Courts in Texas, in view of the full faith and credit clause of the Federal Constitution. (R. 222-231.)

All through this litigation Sanders has conceded that, if Armour's Illinois judgment were final, the

insurance money should properly be awarded to Armour. And Sanders' sole contention has been, and still is, that Armour's Illinois judgment is not final, but merely interlocutory, and from this premise Sanders argues that Armour is seeking in this case to avail itself of the courts and laws of Texas to perfect its interlocutory judgment in the state of Texas, in which state the local exemption laws stand as a complete bar. It is Armour's contention that Sanders' whole argument is based upon a false premise, as we shall proceed to demonstrate by showing unto this Honorable Court that Armour's Illinois judgment against Sanders, under the statutes and court decisions in the State of Illinois, was a final and conclusive adjudication against Sanders of Armour's superior equity in the insurance money in question.

In this controversy between Armour and Sanders, the Circuit Court of Appeals was not concerned with the rights of the insurance company garnishees or with the rights of any other creditors of Sanders. Therefore, the sole question in this case is reduced to this:

What is the nature and effect, *solely as between Armour and Sanders,* of Armour's judgment against Sanders in Illinois?

## I.

**ARMOUR'S ILLINOIS JUDGMENT AGAINST SANDERS WAS A FINAL AND CONCLUSIVE ADJUDICATION AGAINST HIM OF ARMOUR'S SUPERIOR EQUITY IN THE INSURANCE MONEY IN QUESTION, AND THE CIRCUIT COURT OF APPEALS NEITHER ERRED NOR HELD CONTRARY TO THE DECISIONS OF THIS HONORABLE COURT OR THE COURTS OF ILLINOIS, IN GIVING FULL RECOGNITION TO ARMOUR'S SUPERIOR EQUITY SO ADJUDICATED BY A COURT OF COMPETENT JURISDICTION.**

Illinois Attachment Act, Secs. 35, 37.

*The National Bank of America* v. *The Indiana Banking Company,* 114 Ill. 483, 2 N. E. 401.

*People* v. *Curtis,* 341 Ill. 628, 174 N. E. 30.

*Gibbard* v. *Brewers Malting Company,* 185 Ill. App. 254.

*State Bank of Chicago* v. *Thweatt,* 111 Ill. App. 599.

*Martin* v. *Dryden,* 6 Ill. 187.

*Mutual Life Insurance Company* v. *Ritcher,* 196 Ill. App. 27.

*Baber* v. *Galbraith* (Tex. Civ. App.), 186 S. W. 345.

*Conway* v. *Caswell,* 121 Ga. 254, 48 S. E. 956.

Ruling Case Law, Vol. 15, p. 233.

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*Harris* v. *Balk,* 198 U. S. 215, 49 L. ed. 1023.

*Stahl* v. *Webster,* 11 Ill. 511.

*King* v. *Cross,* 176 U. S. 396, 44 L. ed. 211.

*Metcalf* v. *Barker,* 187 U. S. 165, 47 L. ed. 122.

U. S. Constitution, Art. 4, Sec. 1.

Cases cited by Sanders and herein distinguished:

*Lancashire Insurance Co.* v. *Corbetts,* 165 Ill. 592, 46 N. E. 631.

*Becker* v. *Illinois Central Railroad Co.*, 250 Ill. 40, 95 N. E. 42.
*Bigelow* v. *Andress*, 31 Ill. 322.
*McElwee* v. *Wilce*, 80 Ill. App. 338.
*Cole* v. *Cunningham*, 133 U. S. 107, 33 L. ed. 538.

**(A) ARMOUR'S ILLINOIS JUDGMENT WAS FINAL AND CONCLUSIVELY BINDING UPON THE INSURANCE MONEY, TO THE EXCLUSION OF SANDERS.**

Sanders' principal argument is that, since no final judgment was entered against the insurance company garnishees in the Illinois proceeding, prior to the filing of this interpleader action and the issuance of the injunction against Armour, the Illinois proceeding is of no force or effect in so far as *he* is concerned. Sanders cites cases in which the rights of *garnishees* were involved and where the courts have held that garnishees are not conclusively bound by the garnishment proceeding until final judgment is entered against them. Sanders also argues that there might be other *creditors* in Illinois, who might be entitled to share in the insurance money; a fact not shown by the record. Because of this protection which the law gives to garnishees and other creditors, Sanders contends that Armour's Illinois judgment is not final and conclusive against *him*.

The weakness of Sanders' position is nowhere more clearly shown than by the fact that he is compelled to rely upon equities not involved in his controversy with Armour and which equities exist only in favor of persons other than himself.

It has never been contended by Sanders that the Illinois court did not have jurisdiction of the garnishment action, or that he was not properly served with non-

resident notice as required by Illinois law. On the contrary, both of these facts were stipulated at the trial of the instant case. (R. 85.) The sole question is, and always has been, whether the Illinois judgment against Sanders and in favor of Armour was a final and conclusive adjudication, as between Sanders and Armour, of Armour's superior right to the insurance credits attached in Illinois.

Section 35 of the Illinois Attachment Act (R. 145) reads:

> "When the defendant shall be notified as aforesaid, but not served with process, and shall not appear and answer the action, judgment by default may be entered, which may be proceeded upon to *final judgment* as in other cases of default, * * * and *such* judgment shall *bind,* and a special execution shall issue against, the property, *credits* and effects attached, and no execution shall issue against any other property of the *defendant.*" (Italics ours.)

This Section 35 of the Illinois Attachment Act makes no mention of a judgment against garnishees who have been served with process in Illinois, but the section does specifically refer to a "final judgment" against the nonresident defendant (Sanders), which judgment shall "bind" the insurance "credits" attached in Illinois.

The judgment entered against Sanders by the Illinois court (R. 115-116) recites: First, an entry of *default* against Sanders for want of an appearance; second, the hearing of evidence and the assessment of Armour's damages; and third, the *final* judgment of the court against Sanders, reading as follows:

> "This cause coming on for *further* proceedings herein, it is considered by the court *that the attachment herein be and it hereby is sustained,* that the plaintiff have *judgment on the default* and as-

sessment of damages herein, and that the plaintiff have and recover of and from the defendant, W. D. Sanders, the damages of the plaintiff amounting to the sum of seven thousand, five hundred eighty-nine and 81/100 ($7,589.81) in form as aforesaid assessed, together with the costs by the plaintiff herein expended and that *execution issue* therefor." (Italics ours.)

No further judgment would or could have been entered against Sanders. The judgment was final and the issuance of execution was ordered. Under the express language of Section 35 of the Illinois Attachment Act, quoted above, this judgment was binding upon the insurance credits attached in Illinois, thereby giving Armour, as against Sanders, a superior equity therein. A judgment against the insurance company garnishees, which Sanders contends was necessary to make Armour's judgment binding upon him, would have been a judgment in favor of Sanders, which judgment would have decided nothing as between Armour and Sanders.

Said the Illinois Supreme Court in *The National Bank of America* v. *The Indiana Baking Company*, 114 Ill. 483, 2 N. E. 401:

"It has been uniformly held, since the decision in *Stahl* v. *Webster*, 11 Ill. 511, that by the practice which obtains in this state, the judgment against the garnishee must be rendered in favor of the attachment or judgment *debtor*. * * * for in all actions at law the suit must be in the name of the party in whom is the legal interest of the subject matter." (Italics ours.)

It is not apparent how a judgment against the insurance company garnishees in the Illinois action could have conferred upon Armour any added right against Sanders. Such a judgment would have adjudicated solely the liability of the insurance companies

upon the insurance contracts between them and Sanders. Whether or not the insurance company garnishees are liable upon their insurance contracts with Sanders is a moot question in the instant case, because they have admitted liability and have paid the insurance money into the District Court.

If anything further is necessary to demonstrate that Armour's Illinois judgment against Sanders was final, we would refer this Honorable Court to the Illinois cases of *People* v. *Curtis,* 341 Ill. 628, 174 N. E. 30, and *Gibbard* v. *Brewers Malting Company,* 185 Ill. App. 254. In *People* v. *Curtis, supra,* the Illinois Supreme Court held:

> "There must be a final judgment which settles the rights of the parties in respect to the subject matter of the suit and concludes them until it is reversed or set aside to authorize an appeal to this court."

In *Gibbard* v. *Brewers Malting Company, supra,* the Illinois court held that a judgment against a defendant in a garnishment action may be appealed, although no judgment has been entered against the garnishees. Service was had upon the defendant by publication, as was done in Armour's Illinois garnishment action. Also, as in Armour's Illinois garnishment action, default was entered against the defendant for want of an appearance, damages were assessed against the defendant, and final judgment was entered against the defendant upon the default. The defendant appealed. No judgment had been entered against the garnishees. The Illinois court held:

> "Defendant in attachment may appeal from a default judgment entered against him, though the case has not been finally disposed of as to the garnishees."

As was said by the Illinois court in *State Bank of Chicago* v. *Thweatt*, 111 Ill. App. 599:

> "The judgment rendered against the defendant prior to the trial of the garnishment issue, was therefore final only in the sense that *it bound him to the extent of any debt due by the bank* (garnishee) *to him*, or of his interest in any property belonging to him in the hands of the garnishee, *at the time of the service of the attachment writ.* Such a judgment was not a final one in the sense that the original attachment cause was disposed of, but only *final as to the defendant to the extent stated*, and was not final as to the garnishee." (Italics and parenthesis ours.)

Armour's Illinois judgment against Sanders was final and appealable under Illinois law. It bound Sanders to the extent of the credits due him by the insurance company garnishees at the time of the service of the garnishment writs. It settled the rights of Armour and Sanders in respect to the insurance credits attached and is conclusive between them. It established Amour's superior equity in the insurance money, to the exclusion of Sanders, and with the insurance money now on deposit with the District Court below, the Circuit Court of Appeals properly held that the money should be paid to Armour.

**(B) THE INSTANT CASE IS NOT GOVERNED BY THE ILLINOIS DECISIONS IN WHICH THE RIGHTS OF GARNISHEES WERE ADJUDICATED.**

Sanders argues that the Circuit Court of Appeals below gave greater effect to the Illinois garnishment proceeding than would have been given to it in Illinois. He cites *Lancashire Insurance Co.* v. *Corbetts*, 165 Ill. 592, 46 N. E. 631; *Becker* v. *Illinois Central Railroad Co.*, 250 Ill. 40, 95 N. E. 42; *Bigelow* v. *Andress*, 31 Ill. 322, and *McElwee* v. *Wilce*, 80 Ill. App. 338. If

we keep in mind, as we must do at all times, that the present controversy between Armour and Sanders is not concerned with the equities in favor of the insurance company garnishees, it is easily discernable that these cases cited by Sanders do not sustain his argument.

In the Lancashire case the insurance company garnishee was faced with the possibility of having to pay two judgments for the same liability. The controversy concerned the *garnishee's defense* in Illinois that it had paid a prior judgment entered against it in Wisconsin on the same debt. The Illinois Supreme Court simply held:

> "After such payment there was no longer in existence any debt to sustain the further proceedings by appellees in the Circuit Court of Cook County."

In the Becker case the Illinois Supreme Court was likewise concerned with the *garnishee's defense* that it had paid a prior judgment which had been entered against it in another state. As in the Lancashire case, the Illinois court did not pass upon the effect, as between an attachment creditor and his debtor, of the service of the writ of garnishment, followed by judgment for the attachment creditor against his debtor. Neither case decides this question which is in controversy in the instant case.

In the Bigelow case there were two questions presented for determination by the Illinois Supreme Court. One question concerned a charge of fraud which is not pertinent to the present controversy. The other question, as stated in the language of the Illinois Supreme Court (p. 330), was as follows:

> "Whether by commencing an attachment suit, and the service of garnishee process, the attaching creditor acquires such a lien upon property in

the hands of the garnishee, as will authorize a court of equity to interpose its restraining power, to prevent him from disposing of it *before a judgment and execution are had in the proceedings at law.*" (Italics ours.)

This question decided by the Illinois Supreme Court in the Bigelow case was one of jurisdiction only. The decision on this angle of the case is clearly stated in the syllabus, as follows:

"3. A party who has *simply commenced* his suit at law by suing out an attachment, and procured a *service* of garnishee process upon the fraudulent grantee of the debtor, stands in no better position to invoke the aid of a court of chancery to preserve the property in the hands of the garnishee, than he would if he had not sued out his attachment; he is still a *simple contract creditor.*

"4. As a general rule, a creditor must first reduce his debt to a *judgment* before he can resort to a court of equity for aid in its collection." (Italics ours.)

No such jurisdictional question is involved in the present controversy. Furthermore, Armour has not "simply commenced" its attachment suit in Illinois; it has actually reduced its claim against Sanders to judgment and is therefore more than a "simple contract creditor." If this Bigelow case is authority for any proposition applicable in the instant case, it is the proposition that, Armour having reduced its claim against Sanders to judgment in a court of law, it is entitled to full protection of that judgment in a court of equity.

The decision of the Illinois Appellate Court in the McElwee cases concerned merely the effect upon the garnishee of the service of the garnishment writ. This case did not decide what effect the service of garnishment writ may have as between the attaching creditor

and the principal defendant, and it is not in point on this question which is involved in the instant case.

**(C) ARMOUR'S ILLINOIS JUDGMENT VESTED IN IT A SUPERIOR EQUITY IN THE INSURANCE MONEY, WHICH EQUITY MAY BE APTLY TERMED A LIEN, AND WHICH LIEN RELATED BACK TO THE DATE OF THE SERVICE OF THE GARNISHMENT WRITS.**

The controlling Illinois precedent will be found in the case of *The National Bank of America* v. *The Indiana Banking Company,* 114 Ill. 483, 2 N. E. 401, which is the leading Illinois case on garnishment proceedings under the Illinois law. In that case, the Metropolitan Grain & Stock Exchange commenced a foreign attachment suit in the Superior Court of Cook County against The Indiana Banking Company, an Indiana corporation. The National Bank of America was duly served as garnishee in Chicago. Exactly the same procedure was followed as was followed in the attachment proceeding in question in the instant case. Service by the publication and mailing of notice was had upon The Indiana Banking Company, and judgment was taken against it, the same as the service and judgment against Sanders in the attachment action here in controversy. And likewise no judgment had been entered against the garnishee. *Prior* to the service of the garnishment writ upon The National Bank of America, The Indiana Banking Company had drawn two checks against its deposit with The National Bank of America. There were also some other checks which were drawn by The Indiana Banking Company, *subsequent* to the service of the garnishment writ. Under the common law rule in Illinois at that time, the issuance of a check operated as an assignment *pro tanto* of the drawer's fund on deposit with drawee bank. The question in the case was whether

The Indiana Banking Company, the nonresident defendant, could thus assign its bank account after the service of garnishment writ upon its debtor in Illinois. The Illinois Supreme Court held that only the two checks issued *prior* to the service of the garnishment writ were valid assignments; that the other checks which were issued *after* the service of the garnishment writ could not affect the fund attached. The Illinois Supreme Court said:

> "The principles of the former decisions have been recently restated by this court in the case of *Reeve* v. *Smith*, 113 Ill. 47, where it was said, in construing Section 37 of the Attachment Act, (Rev. Stat. 1874), that property, real and personal, attached, and funds in the hands of the garnishee, are placed on the same footing—that is, when attached, such property or funds are appropriated from that time to the payment of a certain class of judgment creditors specifically enumerated. *From the time of the levy or the service of the writ, the property or funds are held, by virtue of the Statute, for the benefit of all the creditors of the attachment debtor who shall obtain judgments against him within the time and in the manner specified in the Statute.* It is the whole property or fund attached and not any specific part or portion, that is held, until it shall be ascertained who or what creditors are entitled to share in the proceeds." (Italics ours.)

That Armour's Illinois judgment against Sanders conclusively bound the insurance money to the payment of Armour's judgment and vested in Armour a superior equity which may be aptly termed a lien, and that such lien when so established related back to the date of the service of the garnishment writs, is clearly illustrated in *Martin* v. *Dryden*, 6 Ill. 187, at pages 212 and 213, where the Illinois Supreme Court said:

> "Without a levy of the attachment, or the serv-

ice of a garnishee, the court has no jurisdiction to proceed, by publication of notice, to render any judgment. But, by the seizure of an estate or property of a defendant, or the *service of garnishment* upon any having estate, property, or effects of his in their hands, *the law has laid hold of a fund*, which it may condemn, and appropriate to the satisfaction of *whatever judgment it may render against the defendant*, and thereupon the Court proceeds to hear as to the indebtedness. * * *

"These remarks and views apply also to the question of lien. This specific appropriation of property must amount to something as to those who may deal in relation to it; else the defendant could, at any time before judgment, defeat the object of the party by a sale, and possibly, even the jurisdiction of the Court. We are of the opinion, that *the attachment is a lien from the date of the levy, when followed by a judgment, and which will have relation back to it.* This doctrine is sanctioned by numerous authorities, which I will not review." (Italics ours.)

Thus it will be observed that Sanders' right to defeat the appropriation of the insurance money toward the payment of Armour's claim was effectively cut off by the service of the garnishment writs upon the insurance companies in Illinois, and upon the entry of Armour's judgment against Sanders, Armour's superior right to the insurance money was conclusively established in so far as Sanders is concerned.

As the Circuit Court of Appeals below (R. 25) correctly held:

"'By a valid exercise of jurisdiction over the persons of the garnishees there present, the Illinois Court was in process of compelling payment of the insurance into court, and had on service sufficient to that end adjudged Sanders' indebtedness to Armour Fertilizer Works and the sufficiency of the attachment process. *There had arisen against*

*him a right to detain the debt as a prospective fund and to apply it to the demands of plaintiff and other creditors, which may aptly be termed a lien. It dates from the service of the writ of garnishment.*" (Italics ours.)

Sanders concedes that this decision of the Circuit Court of Appeals is in accord with Illinois law, where he says at page 31 of his brief:

> "It will be noted that Section 37 of the Illinois Attachment Act (R. 145) provides that all judgments in attachment against the same defendant returnable at the same term shall have (sic) pro rata, according to the amount of the several judgments, in the proceeds of the property attached, either in the hands of a garnishee, or otherwise. This provision has been interpreted by the Illinois Supreme Court in *National Bank* v. *Indiana Banking Company, supra,* as well as in *Reeve* v. *Smith, supra,* as requiring that the fund or debt attached shall be held subject to *pro rata* distribution among all attaching creditors of the same debtor whose writs are returnable to the same term of court."

Sanders seeks to avoid the effect of the Illinois law, thus correctly announced, by the novel argument that, because there might have been other attachment creditors of Sanders entitled to the fund in Illinois, Armour who did attach must be denied the fund. As we have previously stated, this is not a controversy between Armour and other creditors of Sanders, and even if it were, the adjustment of the equities as between Armour and the other creditors could not possibly confer any additional benefits upon Sanders. Sanders' argument that the insurance money should be awarded to him, because the Illinois judgment did not definitely fix the amount which Armour might be entitled to receive for the reason that there might possibly be other

creditors of Sanders who are entiled to share therein, is clearly based upon the erroneous assumption that, if such rights of other creditors did exist, he would be entitled to the insurance money. We challenge this position taken by Sanders as wholly unsound and illogical. In interpleader actions, each claimant must rely upon the strength of his own title rather than upon the weakness of his adversary's title. *Mutual Life Insurance Company* v. *Ritcher,* 196 Ill. App. 27; *Baber* v. *Galbraith* (Tex. Civ. App.), 186 S. W. 345; *Conway* v. *Caswell,* 121 Ga. 254, 48 S. E. 956; 15 Ruling Case Law, p. 233; 33 Corpus Juris, p. 464.

Sanders vigorously criticizes the Circuit Court of Appeals for saying that the service of Armour's Illinois garnishment writs created a "lien" in favor of Armour. Sanders no doubt also feels the urge to criticize this Honorable Court for its statement in *Harris* v. *Balk,* 198 U. S. 215, 49 L. ed. 1023, where Mr. Justice Parkham said:

> "Notice to the debtor (garnishee) of the commencement of the suit, and notice not to pay to his creditor, is all that can be given, whether the garnishee be a mere casual and temporary comer, or a resident of the state where the attachment is laid. His obligation to pay to his creditor is *thereby* arrested, and a *lien* created upon the debt itself." (Italics ours.)

After all, what difference does it make what word is used to designate the right acquired by Armour in the Illinois garnishment proceeding? We are not dealing with words but with equities. It is true that, in so far as the garnishee is concerned, the service of garnishment writ and the entry of judgment against the principal defendant do not amount to a physical seizure of any tangible thing in the garnishee's hands, but if any credits are due by the garnishee to the principal

defendant, the service of the garnishment writ, followed by judgment against the principal defendant, conclusively binds those credits to the payment of the judgment and those credits are thereby as effectually attached, in so far as the principal defendant is concerned, as if a visible species of property had been levied upon. As was said by the Illinois Supreme Court in *Stahl* v. *Webster*, 11 Ill. 511:

> "A debt due from another, is as much property, and as effectually attached, when the person owing it has been summoned as a garnishee, as is any visible species of property upon which the attachment may have been levied."

In the instant case, the only persons interested in the insurance money are Armour and Sanders, and as between Armour and Sanders, most certainly Armour's Illinois judgment against Sanders is conclusively binding upon the insurance money and may be aptly referred to as giving Armour a lien thereon in so far as Sanders is concerned. Armour's superior equity has been fixed by the judgment of a court of competent jurisdiction in Illinois, and that judgment is not subject to review or collateral attack in the federal courts in Texas. The insurance money is now on deposit with the District Court awaiting distribution. This money represents the credits to which Armour's superior equity had attached before the deposit was made, changed only in form. But equity disregards form for substance, and Armour's superior equity was not cut off or destroyed by the voluntary payment of the insurance credits into the District Court in the form of actual money.

**(D) ARMOUR, A CITIZEN OF ILLINOIS, BY ITS ILLINOIS GARNISHMENT ACTION, WAS NOT SEEKING TO AVOID THE EXEMPTION LAWS OF TEXAS, BUT WAS SIMPLY RESORTING TO THE COURTS OF ITS OWN STATE TO COLLECT A DEBT, AS ANY OTHER CITIZEN OF ILLINOIS MIGHT LAWFULLY HAVE DONE.**

Sanders makes the further argument that the Circuit Court of Appeals below erred in its interpretation of the prior decisions of this Honorable Court. He relies principally upon *Cole* v. *Cunningham*, 133 U. S. 107, 33 L. ed. 538. He concedes that there is a distinction between that case and the present one, in that the plaintiff in the garnishment action in that case was fraudulently attempting to evade the laws of his own state. But Sanders makes the startling assertion that this distinction is not material, notwithstanding the later decision of this Honorable Court in *King* v. *Cross*, 176 U. S. 396, 44 L. ed. 211, wherein this very distinction was held to be of controlling significance. In *Cole* v. *Cunningham* the question before this Honorable Court was stated by Chief Justice Fuller in the first paragraph of the opinion as follows:

> "The question to be determined is, whether a decree of the Supreme Judicial Court of Massachusetts restraining citizens of that Commonwealth from the prosecution of attachment suits in New York, brought by them for the purpose of evading the laws of their domicile, should be reversed upon the ground that such judicial action in Massachusetts was in violation of article IV, sections 1 and 2, of the Constitution of the United States."

This is further shown by the words of Mr. Justice Miller in his dissenting opinion, where he said:

> "But the whole argument of the Court is that, because Butler, Hayden & Co. were citizens of Massachusetts, they were under some superior obligation to the law of Massachusetts, and to be

governed by the rights that law conferred, which prevented them from availing themselves of the law of New York that gave them this superior right."

This Honorable Court held that the State of Massachusetts had the right to control the action of its citizens beyond the borders of the state to the extent of preventing those citizens from perpetrating a fraud upon their fellow citizens through legal proceedings in another state and thereby evading the laws of their own domicile.

We respectfully submit to this Honorable Court that there is not even a suggestion in this record that, by the prosecution of its garnishment action in Illinois, Armour was attempting to evade the exemption laws of the State of Texas. There are no circumstances in this record from which may be inferred even a suspicion that Armour even knew that the insurance money in question was exempt from garnishment process within the State of Texas. The comments to the contrary, made by Judge Hutcheson and by Sanders, are wholly unjustifiable on the record in this case. *Cole v. Cunningham, supra,* is most certainly not in point in the present case.

That this is so is clearly apparent from this Honorable Court's decision in the later case of *King* v. *Cross, supra,* in which it was held that the service of a garnishment writ in the State of Rhode Island was paramount to a Massachusetts judgment subsequently entered against the garnishee debtor, although the Massachusetts judgment was prior to any judgment against the garnishee debtor in the Rhode Island garnishment action. In that case, state insolvency proceedings were begun against the principal debtor in Massachusetts, where he was domiciled. The next day a garnishment

writ was issued and served in Rhode Island in a non-resident attachment suit filed there that day by a citizen of Rhode Island against the insolvent Massachusetts debtor. Subsequently, the Massachusetts insolvency assignee was appointed and all of the insolvent debtor's assets, tangible and intangible, vested in the assignee by operation of law. The insolvency assignee then instituted suit in Massachusetts against the Rhode Island garnishee debtor. During the pendency of the Massachusetts suit, the insolvency assignee assigned the claim to King, who prosecuted the suit to final judgment in Massachusetts against the Rhode Island garnishee debtor. King then intervened in the Rhode Island garnishment proceeding, which had not yet proceeded to judgment against either the principal debtor or the garnishee debtor, and there claimed the attached fund to the exclusion of the Rhode Island attachment creditor. The Rhode Island trial court entered judgment for the Rhode Island attachment creditor against the principal defendant, the insolvent Massachusetts debtor, and sustained the attachment. The judgment was affirmed by the Rhode Island Supreme Court, and. upon writ of error, by this Honorable Court.

Before this Honorable Court it was contended, among other things, (1) That the legal effect of the Massachusetts insolvency proceedings was to vest in the Massachusetts court all credits owing to the insolvent Massachusetts debtor, and that therefore there could be no debt owing to the insolvent Massachusetts debtor in the Rhode Island garnishment proceedings; and (2) That under the Massachusetts Insolvency Statute all attachments made within four months were dissolved, and that therefore the debt in question was exempt from garnishment in Rhode Island.

On the first point this Honorable Court held that the issuance and service of the Rhode Island garnishment writ, several days before the non-resident debtor's estate vested in the Massachusetts insolvency assignee, had the legal effect of charging the debt in question with the attachment, so that any title which the assignee acquired was subject to the attachment.

On the second point this Honorable Court held that the Massachusetts Insolvency Statute, dissolving attachments and exempting the insolvent debtor's estate from attachment in Massachusetts, had no extraterritorial effect, and therefore did not control the attachment levied in Rhode Island.

That this Honorable Court in *King* v. *Cross* fully recognized the distinction between that case and *Cole* v. *Cunningham* is clearly shown by the following quotation from the opinion of Mr. Justice White:

> "The case as presented does not involve the power of a Massachusetts court to assert control over a citizen of that State in order to prevent him from prosecuting in Rhode Island an attachment levied by him upon property in Rhode Island, in supposed violation of the laws of Massachusetts. On the contrary, the question here is simply whether a citizen of Rhode Island was prevented in the courts of his own State from levying an attachment upon a debt due by a citizen and resident of Rhode Island to a citizen and resident of Massachusetts because such levy was in conflict with the Massachusetts insolvent statutes."

Armour is a citizen of Illinois where it was proceeding in a perfectly lawful and orderly manner to collect a debt. Its good faith is not questioned by the pleadings or evidence in this case. It was simply resorting to the courts of the State of its domicile, as any other citizen of Illinois might lawfully have done. It was

not seeking to avoid the exemption laws of the State of Texas. *King* v. *Cross* is the controlling precedent of this Honorable Court in the instant case. Armour's claim to the insurance money in question is just as free from the Texas exemption laws, as was the claim of the Rhode Island attachment creditor free from the exemption under the Massachusetts Insolvency Law. In both cases the superior equities of the attaching creditors were fixed by the laws of states in which the exemption laws relied upon were ineffective. Armour's superior equity is even more conclusively established in the instant case, because of Armour's final Illinois judgment against Sanders; whereas, in *King* v. *Cross*, this Honorable Court held that the attaching creditor's superior equity was established by the mere service of the garnishment writ.

**(E) IN THE INSTANT CASE, ARMOUR HAS NOT SOUGHT TO ACQUIRE ANY RIGHT TO THE INSURANCE MONEY IN TEXAS CONTRARY TO THE PUBLIC POLICY OR LAWS OF THE STATE OF TEXAS, BUT HAS MERELY ASKED FOR RECOGNITION OF THE LIEN PREVIOUSLY ACQUIRED BY IT IN ILLINOIS, AS REQUIRED BY THE FULL FAITH AND CREDIT CLAUSE OF THE FEDERAL CONSTITUTION.**

Sanders' whole argument completely disregards the well recognized distinction between the *creation* and the *enforcement* of liens. Upon the service of the garnishment process under the Illinois law, Armour acquired an inchoate lien upon the insurance credits attached, which lien, upon judgment being entered against Sanders, became a vested right entitling Armour to have the insurance money applied to the payment of its judgment. It is of course true, as in the case of all liens, that further proceedings were necessary to *enforce* Armour's lien. Nevertheless Armour's lien *existed* and was vested from and after the entry of the judgment against Sanders.

The distinction between the creation and the enforcement of a lien was fully recognized by this Honorable Court some thirty years ago in the case of *Metcalf* v. *Barker*, 187 U. S. 165, 47 L. ed. 122. It is worthy of note that the decision in that case set an entirely new precedent. Prior to that time it seems to have been well settled that the beginning of a creditor's suit to reach equitable assets gave such a creditor at least an inchoate lien; but the authorities were quite equally divided as to whether, when the suit was begun more than four months before bankruptcy of the debtor, such a lien was dissolved under the Bankruptcy Act. *Metcalf* v. *Barker* settled the question. In that case this Honorable Court held that an equitable lien *acquired* by the filing of a creditor's bill more than four months before the defendant's bankruptcy must be recognized by the bankruptcy court, although final judgment decreeing the *enforcement* of the lien was not entered until within the four months preceding bankruptcy. This Honorable Court said:

> "Doubtless the lien created by the judgment creditor's bill is contingent in the sense that it might possibly be defeated by the event of the suit, but in itself, and so long as it exists, it is a charge, a specific lien, on the assets, not subject to being devested save by payment of the judgment sought to be collected."

And this Honorable Court further said:

> "In our opinion the conclusion to be drawn from this language (meaning Section 67f of the Federal Bankruptcy Act) is that it is the lien *created* by a levy, or a judgment, or an attachment, or otherwise, that is invalidated. * * * A judgment or decree in *enforcement* of an otherwise valid *pre-existing* lien is not the judgment denounced by the Statute, which is plainly confined to judgments creating liens." (Italics and parenthesis ours.)

We respectfully submit that the Circuit Court of Appeals neither erred nor held contrary to the decisions of this Honorable Court or the courts of Illinois, in giving full recognition to Armour's superior equity and in awarding the insurance money to Armour, as required by the full faith and credit clause of the United States Constitution. (Art. 4, Sec. 1.)

## II.

**IN AWARDING THE INSURANCE MONEY TO ARMOUR, THE CIRCUIT COURT OF APPEALS DID NOT VIOLATE ANY OF THE PROCEDURAL OR REMEDIAL LAWS OF THE STATE OF TEXAS.**

*Vogel* v. *Thiesing*, 55 Fed. (2d) 205.
*Duncan* v. *Gegan*, 11 Otto 810, 25 L. ed. 875.
Illinois Attachment Act, Sec. 35.
U. S. Constitution, Art. 4, Sec. 1.

**(A) THIS IS AN INTERPLEADER ACTION IN WHICH ARMOUR AND SANDERS, AS ADVERSE CLAIMANTS, ARE EACH SEEKING TO ASSERT AN INDEPENDENT TITLE TO THE INSURANCE MONEY, AND THE PROPER DISTRIBUTION OF THE MONEY IN THIS ACTION DOES NOT INVOLVE THE LEVYING OF ANY TEXAS ATTACHMENT, GARNISHMENT, OR EXECUTION, IN VIOLATION OF ANY OF THE LAWS OF TEXAS.**

Armour has never sought, in this interpleader action, to *acquire* any rights in this insurance money, within the State of Texas, in violation of the law or public policy of that state. Armour's case is based upon the contention that the rights which it claims in the insurance money *were acquired by it by virtue of the garnishment proceedings in a court of competent jurisdiction in Illinois,* where the insurance credits had a situs for the purpose of garnishment, and where such credits were concededly not exempt from such process. And Armour has merely asked that the federal courts

in Texas recognize those substantive rights and give them effect there.

In so far as concerns the controversy in the instant case, it may be conceded that the Texas exemption law is a bar to the successful prosecution of a garnishment action against the insurance credits within the State of Texas; but we would emphasize the fact that the instant case is not a garnishment action in any sense of the word. This is an interpleader action in which Armour and Sanders, as adverse claimants, are each seeking to assert an independent title to the insurance money now on deposit with the District Court. We are familiar with the rule that the exemption laws of Texas apply equally to executions levied on money judgments rendered in Texas by both the federal and state courts. But in the instant case Armour has never sought a money judgment against Sanders in Texas, either on the debt or on the Illinois judgment. The proper determination of the controversy in the instant case does not involve the entry of such a judgment. Nor does the proper distribution of the insurance fund in question involve the levying of any Texas attachment, garnishment or execution, to which the Texas exemption law might be interposed as a bar.

In discussing the case of *Vogel* v. *Thiesing*, 55 Fed. (2d) 205, at page 42 of his brief, Sanders concedes, quoting his exact words, that "there is no question but that any court in passing upon substantive rights must apply the law of the jurisdiction or jurisdictions in which those rights arose." And his whole argument under his "SECOND ASSIGNMENT OF ERROR" is based upon the erroneous assertion that Armour is seeking in the instant case to enforce a procedural remedy which conflicts with the established law and public policy of the State of Texas.

We believe that we have fully demonstrated under the first point of this brief that Armour is not seeking in the instant case to enforce any procedural remedy whatsoever in the State of Texas; but that, on the contrary, Armour is seeking recognition of a substantial vested equity which it acquired prior to the institution of the instant case.

That the Circuit Court of Appeals was bound to recognize Armour's superior equity in the insurance money in question is illustrated by the decision of this Honorable Court in *Duncan* v. *Gegan*, 11 Otto 810, 25 L. ed. 875. In that case this Honorable Court considered a case in which the Circuit Court of the United States for the District of Louisiana had acquired jurisdiction of the controversy before the case in the state court had been concluded but after the state court had fixed the relative priorities of the several lien claimants. Duncan, one of the lien claimants, then removed the case to the federal court and subsequently filed a bill in the federal court seeking to establish his lien as superior to all others. In holding that the status of Duncan's lien should be the same in the federal court as it was fixed by the state court, this Honorable Court said:

> "Whether the proceedings which were afterwards had in the Circuit Court at the instance of the appellant (Duncan) were part of the original suit removed from the state court, *or a new and distinct suit begun in the Circuit Court by the appellant himself after the removal*, the judgment of the Supreme Court of the State on the appeal in the original suit, *concludes him as to his rights thus litigated and disposed of.*" (Parenthesis and italics ours.)

**(B) BY VALID EXERCISE OF JURISDICTION OVER GARNISHEES IN ILLINOIS, THE ILLINOIS COURT HAD, ON SERVICE UPON SANDERS SUFFICIENT TO THAT END, ADJUDGED SANDERS' INDEBTEDNESS TO ARMOUR AND SUSTAINED THE ATTACHMENT, WHEREBY, AS BETWEEN ARMOUR AND SANDERS, ARMOUR'S SUPERIOR EQUITY IN THE INSURANCE MONEY WAS FINALLY AND CONCLUSIVELY ADJUDICATED WITHOUT ANY RESORT TO THE PROCEDURAL OR REMEDIAL LAWS OF TEXAS.**

Sanders concedes that the Illinois court had jurisdiction of the attachment action against him there; that non-resident service was had upon him as required by Illinois law; and that his insurance companies were duly served in Illinois, as garnishees. (R. 85.) And the record shows, without contradiction, that the Illinois court entered a default order against Sanders for want of an appearance, sustained the attachment, and entered a final judgment against him in favor of Armour (R. 115-116), in accordance with Section 35 of the Illinois Attachment Act. Sanders further concedes that, at the time the garnishment writs were served in Illinois, the insurance money attached there was then due and owing from the insurance company garnishees; that the insurance companies filed garnishee answers admitting the indebtedness; and that his homestead exemption was no defense in the Illinois action. (R. 86.)

Thus, by valid exercise of jurisdiction over the insurance company garnishees in Illinois, the Illinois court had, on service upon Sanders sufficient to that end, adjudged Sanders' indebtedness to Armour and sustained the attachment of the insurance credits, which credits in Illinois are conceded to have been free and clear of Sanders' exemption. Under Section 35 of the Illinois Attachment Act, this judgment against Sanders bound the insurance credits, and, as we have heretofore demonstrated, Armour thereby acquired a

superior equity in the insurance money, to the exclusion of Sanders. Armour's superior equity was thus acquired without resort to the procedural or remedial laws of Texas, and, in recognizing Armour's superior equity and awarding the insurance money to Armour, the Circuit Court of Appeals did not violate any of the procedural or remedial laws of Texas, but on the contrary properly obeyed the mandate of Section 1 of Article 4 of the United States Constitution.

## III.

**THE NOTES UPON WHICH ARMOUR OBTAINED ITS ILLINOIS JUDGMENT AGAINST SANDERS CONTAINED A WAIVER BY SANDERS OF HIS EXEMPTIONS.**

*Cameron* v. *Fay*, 55 Tex. 58.
*Whitsell* v. *Jones*, 39 S. W. 405.
*Alvarado National Bank* v. *Ferguson*, 59 Tex. Civ. App. 113; 126 S. W. 622.
*Russell* v. *Hamilton*, 174 S. W. 705.
Texas Constitution, Art. XVI, Sec. 51.
Texas Revised Civil Statutes (1925), Articles 3833 and 3834.

**(A) IF THE INSTANT CONTROVERSY IS TO BE DECIDED UPON THE BASIS OF WHAT ARMOUR AND SANDERS CONTEMPLATED AND AGREED WHEN SANDERS BECAME INDEBTED TO ARMOUR, THEN SANDERS MUST BE HELD TO HAVE EXPRESSLY WAIVED AND RENOUNCED FOR HIMSELF AND FAMILY ANY AND ALL EXEMPTION RIGHTS HE MIGHT HAVE UNDER AND BY VIRTUE OF THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, OR ANY OTHER STATE OF THE UNITED STATES.**

In the argument under his "THIRD ASSIGNMENT OF ERROR" Sanders makes the statement (page 50 of his Brief) that

"When Armour extended credit to Sanders, it

did so with full notice of the fact that it could not under any normal circumstances expect to appropriate the homestead and household goods of Sanders to the satisfaction of its claim. It was perfectly satisfied to extend credit to him and to take his note, payable in Texas, upon this basis".

Upon this statement Sanders makes the argument that there is "no injustice in confining Armour to the enforcement of the remedial rights which were in contemplation at the time the debt in question was created." He further argues that "On the contrary, it seems to us that justice demands that Sanders be protected in the exemption rights accorded to him by the laws of his native State, and which were impliedly agreed to by Armour at the time that it first contracted with him."

If the instant controversy is to be decided upon the basis of what Armour and Sanders contemplated and agreed to at the time the indebtedness was incurred, it is of the utmost importance that we observe the pertinent fact that the very notes upon which Armour recovered its Illinois judgment against Sanders contained an express provision whereby Sanders waived and renounced for himself and family any and all exemption rights he might have under or by virtue of the constitution or laws of Texas, or any other state of the United States. (R. 89-97.)

Armour is not relying upon this waiver of exemption contained in the notes in question, because, for the reasons already stated, it believes that its rights in this case were fixed by its judgment against Sanders in Illinois, where the Texas exemption law is conceded by Sanders to have had no force or effect. However, since Sanders has raised this question as to what Armour and Sanders contemplated and agreed to, we call this

Honorable Court's attention to the exemption waivers executed by Sanders.

**(B) THERE IS NO EXPRESS CONSTITUTIONAL OR STATUTORY EXEMPTION OF HOMESTEAD INSURANCE MONEY IN TEXAS, BUT SUCH EXEMPTION EXISTS ONLY BY JUDICIAL CONSTRUCTION, AND THE COURTS OF TEXAS HAVE UNIFORMLY HELD THAT SUCH INSURANCE MONEY IS NOT REGARDED AS REAL ESTATE, MUCH LESS AS A SUBSTITUTE FOR THE HOMESTEAD ITSELF, AND THE EXEMPTION AS TO THE INSURANCE MONEY MAY BE WAIVED BY THE HUSBAND, EVEN WITHOUT THE CONSENT OF THE WIFE.**

It should be remembered that we are not dealing here with a homestead having a situs exclusively in Texas, but with proceeds from insurance policies which are neither limited as to situs nor fully exempt as a homestead. There is no express constitutional or statutory exemptions in Texas of the proceeds of insurance upon a homestead. The Texas Constitution provides that "the homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon" and further that "the homestead in a city, town or village, shall consist of lot or lots, not to exceed in value five thousand dollars, at the time of their designation as a homestead, without reference to the value of any improvements thereon". Texas Constitution, Article XVI, Section 51. The Texas statute defines a homestead in similar terms. Texas Revised Civil Statutes (1925), Article 3833. And the only other statutory provision in Texas regarding the homestead is that "the proceeds of the voluntary sale of the homestead shall not be subject to garnishment or forced sale within six months after such sale". Texas Revised Civil Statutes (1925), Article 3834.

The exemption of proceeds from insurance upon a

homestead in Texas exists only by judicial construction, but the courts of Texas have uniformly held that even though such proceeds are exempt for a time, the proceeds are not regarded as real estate, much less as a substitute for the homestead itself. *Cameron* v. *Fay*, 55 Tex. 58; *Whitsell* v. *Jones*, 39 S. W. 405, *Alvarado National Bank* v. *Ferguson*, 55 Tex. Civ. App. 113, 126 S. W. 622; *Russell* v. *Hamilton*, 174 S. W. 705. And the exemption as to the proceeds of the insurance upon a Texas homestead may be waived, and this may be done by the husband alone, without the joinder of the wife. In *Whitsell* v. *Jones*, *supra*, the Texas court said:

> "There can be no doubt that he (the husband) could appropriate it, without the consent of the wife, to the payment of debts, and could in good faith invest it in other property than another homestead; and it would follow that he could, without her knowledge or consent, *waive the exemption* * * *." (Parenthesis and italics ours.)

## CONCLUSIONS.

By virtue of garnishment proceedings in the State of Illinois, Armour acquired a lien upon the whole of the insurance credits attached there, prior to the institution of the interpleader action in this cause. Upon the institution of this interpleader action, the garnishees deposited the insurance credits with the District Court in the form of actual money. This change in the form of the insurance credits was voluntary on the part of the garnishees and without Armour's consent. Since equity disregards form for substance, Armour's Illinois lien followed the insurance credits into the District Court. The superiority of Armour's

lien over Sanders' exemption claim had been previously adjudicated by a court of competent jurisdiction in the garnishment action in Illinois, where the insurance credits had a situs sufficient to that end, and where the Texas exemption laws were of no effect. Under the full faith and credit clause of the United States Constitution, the Circuit Court of Appeals below correctly held that the insurance money should be paid to Armour.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1933.

No. 106

W. D. SANDERS, PETITIONER,

*vs.*

ARMOUR FERTILIZER WORKS AND NATIONAL FIRE INSURANCE COMPANY.

## SUGGESTIONS CONCERNING THE QUESTION OF THE JURISDICTION OF THE DISTRICT COURT BELOW.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1933.

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## No. 106

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W. D. SANDERS, PETITIONER,

*vs.*

ARMOUR FERTILIZER WORKS AND NATIONAL FIRE INSURANCE COMPANY.

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## SUGGESTIONS CONCERNING THE QUESTION OF THE JURISDICTION OF THE DISTRICT COURT BELOW.

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We respectfully suggest for the consideration of this Honorable Court the question, whether or not the District Court in Texas had jurisdiction to enjoin the prosecution of Armour's garnishment suit in Illinois, or jurisdiction to hear and determine the merits of the present controversy, in view of the requirement of the Federal Interpleader Act that there must be "two or more *adverse* claimants * * * claiming to be entitled * * * to such insurance." 28 U. S. C. A. 41 (26), as amended May 8, 1926. This Act provides that the district courts shall have original jurisdiction in these cases, where the

insurance company, by verified bill, avers—and of course proves—this jurisdictional fact among others.

We have raised this jurisdictional question on every occasion in the courts below. At the first trial in the District Court, the late District Judge Estes held that the District Court did not have jurisdiction, it being his opinion that Armour and Sanders were not adverse claimants. See *National Fire Insurance Co.* v. *Sanders*, 33 Fed. (2d) 157. Upon the first appeal of this case, the Circuit Court of Appeals held that Armour and Sanders were adverse claimants and that the District Court did have jurisdiction under the statute. See *National Fire Insurance Co.* v. *Sanders*, 38 Fed. (2d) 212. This Circuit Court of Appeals decision was followed as the law of the case by the District Court at the second trial and by the Circuit Court of Appeals in the decision now before this Honorable Court for review. (R. 223)

We are suggesting this jurisdictional question to this Honorable Court at this late date, because Sanders has filed no brief as required by Rule 27, to which we could file a reply brief raising this point. It did not seem to us that this point was pertinent to the question of whether or not this Honorable Court should grant Sanders' petition for writ of certiorari, and for that reason we did not raise the point in our brief in opposition to Sanders' petition. We realize that this Honorable Court may wish to decide this case without the filing of briefs under Rule 27, and we feel that this jurisdictional question should be suggested for consideration.

It seems clear that this Federal Interpleader Act was intended to protect the insurance companies, and was not intended to affect the rights and equities as between the several adverse claimants. Thus viewing the matter

from the position of the insurance companies in the instant case, were Armour and Sanders adverse claimants who were claiming to be entitled to this insurance?

We have never contended that this insurance, or even the proceeds thereof, belongs to Armour. We have never contended that the money on deposit with the District Court below belongs to Armour. We have contended, and do contend, that Armour has an equitable lien upon the insurance credits and upon the deposited money which represents such credits, which lien we maintain is superior to Sanders' homestead exemption claim. It is true that the enforcement of Armour's lien will exhaust the insurance money, but this is so only because of the extent of Armour's lien; Armour's Illinois judgment against Sanders is for more than the amount of the insurance. This does not alter the fact that Armour is merely seeking to enforce a lien. The nature of Armour's claim is exactly the same as in a case where the enforcement of the lien will exhaust only a part of the fund.

One does not ask for the enforcement of a lien upon what one claims to own. Armour is not saying to the insurance companies, "You owe this insurance to us." On the contrary, Armour says that the insurance companies owe the insurance to Sanders. And, if this fact were not admitted by the insurance companies, Armour would have to prove this fact before it could enforce its lien.

We believe the situation here is not different from a case wherein a judgment creditor seeks to enforce a judgment lien upon chattels in the hands of a custodian, by levy and sale upon execution. Whether the custodian is sued by the owner, or the chattels are sold to pay the judgment, the custodian is held answerable

only to one claimant—the owner of the chattels. He is not faced by two claimants. But even if the judgment creditor be regarded as a second claimant, he is merely claiming the right to enforce his lien; he does not dispute his judgment debtor's ownership of the chattels, nor does he claim that the custodian is accountable to him and not to his judgment debtor. On the contrary he only asks that the law be permitted to take its course in the matter of enforcing his lien upon the judgment debtor's property. The custodian is not in the position of having to contend with two "adverse claimants". And, the fact that the owner may claim that the chattels are exempt from execution, does not make him and his judgment creditor adverse claimants against the custodian; nor present any reason for interpleader.

In the instant case we believe the insurance companies were in exactly the same position as the custodian we have been discussing. They were confronted with no greater hazard than that of defending against one claim and one claimant—Sanders' claim against them upon the insurance contracts.

In *Chicago, R. I. & P. R. R. Co.* v. *Sturm*, 174 U. S. 710, 43 L. ed. 1145, this Honorable Court commented upon the nature of garnishment proceedings, as follows:

> "A debt may be as valuable as tangible things. It is not capable of manual seizure, as they are, but no more than they can it be appropriated by attachment without process and the power to execute the process. A notice to the debtor must be given, and can only be given and enforced where he is * * * Of course, *the debt is the property of the creditor, and because it is, the law seeks to subject it, as it does other property,* to the payment of *his* creditors. If it can be done in any other way than by process against and jurisdiction

of his debtor, that way does not occur to us." (First italics ours.)

In *North Chicago Rolling Mill Co.* v. *St. Louis Ore & Steel Co.*, 152 U. S. 596, 38 L. ed. 565, this Honorable Court gave full consideration to the nature and effect of garnishment proceedings under the Illinois law. We quote several pertinent passages from the opinion in that case. Speaking for this Honorable Court, *Mr. Justice* Jackson, said:

> "This garnishment proceeding was, under the Illinois statutes, in the name of the St. Louis Company (the garnishee's creditor), and judgment was rendered in its favor against the Chicago Company (the garnishee) for the amount of the verdict for the use of the Joliet Company (the attaching creditor) and others entitled to share therein'" (Parentheses ours.)

Continuing, *Mr. Justice* Jackson said:

> "The service of garnishment neither changed nor interrupted the contractual relations existing between the Chicago Company (garnishee) and the St. Louis Company (garnishee's creditor). The rights and equities existing, and to arise out of those contractual relations, were in no way terminated or defeated by that service. The legal operation and effect of the garnishment proceedings and of the final order therein made was only to impound what was legally and equitably due from the garnishee after the adjustment of the claims between the latter and the principal debtor, and place it beyond the control of the debtor and subject to collection for the benefit of the attaching creditor." (Parentheses ours.)

*Mr. Justice* Jackson further said:

> "The Illinois statutes in relation to garnishment are substantially the same as the generality of statutes on the subject, and contain no provision sustaining the proposition that either the service of the writ or the order made in the proceedings operates to transfer the debt, but only binds it and prevents the principal debtor from receiving it."

In concluding his observations upon the nature and effect of garnishment actions in Illinois, *Mr. Justice* Jackson said:

> "The proposition here laid down is in harmony with the generally recognized principle that the rights of the garnisher do not arise above or extend beyond those of his debtor; that the garnishee shall not by operation of the proceedings against him, be placed in any worse condition than he would have been in had the principal debtor's claim been enforced against him directly; that the liability, legal and equitable, of the garnishee to the principal debtor is a measure of his liability to the attaching creditor, who takes the shoes of the principal debtor and can assert only the rights of the latter. *Towner* v. *George*, 53 Ill. 168; *Richardson* v. *Wilson* (Iowa) May 12, 1892; *Huntington* v. *Risdon*, 43 Iowa, 518."

In *National Bank of America* v. *The Indiana Banking Co.*, 114 Ill. 483, 2 N. E. 401, the Illinois Supreme Court said:

> "It has been uniformly held, since the decision in *Stahl* v. *Webster*, 11 Ill. 511, that by the practice which obtains in this state, the judgment against the garnishee must be rendered in favor of the attachment or judgment *debtor* * * * for in all actions at law the suit must be in the name of the party in whom is the legal interest of the subject matter." (Italics ours.)

Section 1 of the Illinois Garnishment Act provides that,

> "If the garnishee is indebted to or has any effects or estate of a part only of such defendants, the judgment shall be against the garnishee in favor of such part of the *defendants* for the use of the plaintiff." (Italics ours.)

This Honorable Court has consistently held that, where a garnishee pays the judgment entered against him, his obligation to his creditor is as fully discharged, and to the same extent, as if his creditor had recovered and collected the judgment. See *Harris* v. *Balk*, 198 U. S.

215, 49 L. ed. 1023; *Louisville & N. R. Co.* v. *Deer*, 200 U. S. 176, 50 L. ed. 427. The reason for this is that the attaching creditor, rather than being adverse to the garnishee's creditor, is actually representing the garnishee's creditor in the enforcement of the latter's rights against the garnishee. Said this Honorable Court in *Harris* v. *Balk, supra:*

> "The plaintiff in such proceeding in the foreign state is able to sue out the attachment and attach the debt due from the garnishee to his (the garnishee's) creditor, because of the fact that the plaintiff is really, in such proceeding, a representative of the creditor of the garnishee, and therefore if such creditor himself had the right to commence suit to recover the debt in the foreign state, his representative has the same right, as representing him, and may garnish or attach the debt, provided the municipal law of the state where the attachment was sued out permits it."

Section 16 of the Illinois Garnishment Act provides:

> "The judgment against a garnishee shall acquit him from all demands by the defendant for all goods, effects and credits paid, delivered or accounted for by the garnishee by force of such judgment."

By section 35 of the Illinois Attachment Act (R. 145) it is provided that Armour's Illinois judgment against Sanders "shall bind, and a special execution shall issue against, the * * * credits attached." By all of the authorities, that judgment was a final and conclusive adjudication of Armour's right to have the insurance credits applied on its judgment, but it did not make Armour the owner of those credits. Armour's right thus acquired may be aptly termed an "equitable lien."

Viewed from the position of the insurance companies: Armour's Illinois garnishment was in the name of Sanders against the insurance companes, and any judg-

ment against the latter would be in favor of Sanders; the Illinois garnishment did not disturb the rights and equities existing between Sanders and the insurance companies under the insurance contracts between them and him; the garnishment did not place the insurance companies in any worse position than if they were being sued by Sanders in the Illinois proceeding; and payment of any judgment rendered against them in the Illinois action would discharge them just as fully and completely as the payment of any other judgment rendered against them in favor of Sanders.

In view of the facts and the law which we have reviewed herein, we believe that this Honorable Court will wish to dispose of this jurisdictional question before considering the merits of this controversy. Does the Federal Interpleader Act confer jurisdiction upon the district courts in cases of this kind, where the insurance companies are in the position of being required to defend against only one claim and one claimant—the claim of their insured upon their insurance contracts with him? Are Armour and Sanders "adverse claimants * * * claiming to be entitled * * * to such insurance", within the meaning of 28 U. S. C. A. 41 (26), as amended May 8, 1926?

Respectfully submitted,

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IN THE

# Supreme Court of the United States

October Term, A. D. 1933

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NO. 106

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W. D. SANDERS, Petitioner,

vs.

ARMOUR FERTILIZER WORKS and NATIONAL FIRE INSURANCE COMPANY, Respondents.

---

## Respondent's Reply to Suggestions of Petitioner Concerning the Question of the Jurisdiction of the District Court Below

---

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IN THE

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## Respondent's Reply to Suggestions of Petitioner Concerning the Question of the Jurisdiction of the District Court Below

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We are of the opinion that the suggestions concerning the question of the jurisdiction of the District Court below, made on behalf of W. D. Sanders, do not call for a lengthy reply. These suggestions on behalf of the Petitioner are based upon a very narrow construction of the words "adverse claimants," contained in the Federal Interpleader Act, 28 U. S. C. A. 41 (2[illegible]), as amended May 8, 1926. The construction given to the words "adverse claimants" by the Petitioner, if followed, would defeat the main purpose for which the Federal Interpleader Act was enacted. It is submitted

that most of the claims against insurance companies by citizens of different States arise in instances like that under consideration by the Court, where a garnishor is one of the parties involved. It is difficult to conceive situations where the above Act would be applicable if no creditor is involved. In life insurance there might be situations where relatives are claiming adversely the proceeds of a policy, but in the vast majority of such cases the relatives will be living in the same State.

The interpretation placed upon the words "adverse claimants" by the petitioner seems to construe those words contained in the Federal Interpleader Act as meaning that there must be two or more claimants to the sole ownership of the proceeds involved. The Petitioner seems to proceed on the theory that if one party is merely asserting an equitable lien to the proceeds due on an insurance policy, that, since he is not claiming absolute ownership of the fund, that his claim is not adverse to the party who does claim absolute ownership.

A similar contention was made in a case styled *In Re Rathman*, 183 Fed. 913, where the words "adverse claimants," as used in the Bankruptcy Law, was the subject of construction. The Court held that a mere lien-holder may be an adverse claimant within the meaning of the Bankruptcy law. In the course of its Opinion, the court said:

> "A claim of paramount or absolute title is not essential to the character of an adverse claimant. One who has a substantial claim to a lien created by a Bankrupt upon his property before the peti-

tion in bankruptcy is filed, is equally an adverse claimant with one who claims absolute title thereto."

The contention herein made by the Petitioner that the claims of Armour and Sanders are not adverse, was, it is submitted, correctly and tersely disposed of by the United States Circuit Court of Appeals for the Fifth Circuit, in these words:

> "We think that the facts in this case show that the District Court is mistaken in concluding that the claims of Armour and Sanders are not adverse. Each is claiming the proceeds of the policies, to the exclusion of the other. Armour claims by virtue of its Illinois judgment against Sanders and the attachment, and Sanders, while not disputing his obligation to Armour, claims the proceeds notwithstanding, by virtue of exemption under the laws of Texas. The statute is remedial, and to be liberally construed. It is broad enough to cover any adverse claims against the proceeds of the policies, no matter on what grounds urged. Its terms are not to be interpreted as meaning only adverse claims of those pretending to be beneficiaries of the insurance."

Respectfully submitted,

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# SUPREME COURT OF THE UNITED STATES.

No. 106.—October Term, 1933.

W. D. Sanders, Petitioner, *vs.* Armour Fertilizer Works and National Fire Insurance Company. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[April 30, 1934.]

Mr. Justice McReynolds delivered the opinion of the Court.

*New York Life Insurance Company* v. *Dunlevy* (1916), 241 U. S. 518, exhibited the serious problems encountered by insurance companies when conflicting demands are made by residents of different States. There two individuals, residents of California and Pennsylvania, claimed the surrender value of a life policy. The insurer unsuccessfully sought through interpleader proceedings in Pennsylvania to secure release from all liability.

In order to mitigate the difficulties, Congress, by the Act of February 27, 1917, 39 Stat. 929, authorized insurance companies to file bills of interpleader in District Courts of the United States. An amendment followed February 25, 1925, 43 Stat. 976, U. S. C. A. 28, Sec. 41 (26). And the Act of May 8, 1926, 44 Stat. 416, U. S. C. A. 28 Supp., Sec. 41 (26) (in the margin[1]), rewrote and amplified the provisions of the earlier enactments.

[1]Act approved May 8, 1926, 44 Stat. 416. "Chap. 273—The district courts of the United States shall have original jurisdiction to entertain and determine suits in equity begun by bills of interpleader duly verified, filed by any casualty company, surety company, insurance company or association or fraternal or beneficial society, and averring that one or more persons who are bona fide claimants against such company, association, or society resides or reside within the territorial jurisdiction of said court; that such company, association, or society has in its custody or possession money or property of the value of $500 or more, or has issued a bond or policy of insurance or certificate of membership providing for the payment of $500 or more to the obligee or obligees in such bonds or as insurance, indemnity, or benefits to a beneficiary, beneficiaries, or the heirs, next of kin, legal representatives, or assignee of the person insured or member; that two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property or the penalty of such bond, or to such insurance, indemnity, or benefits; that such company, association, or society has deposited such money or property

National Fire Insurance Company and Hartford Fire Insurance Company, Connecticut corporations, under policies issued to him, became indebted to W. D. Sanders, resident of the Eastern District of Texas, for loss by fire (July 3, 1927) of property located therein and part of his homestead. Texas statutes exempt from execution the proceeds of such insurance. The indebtedness of the two insurers respectively was adjusted at $3400.00 and $4250.00; these sums they agreed to pay. Both Companies were garnished in a foreign attachment proceeding against Sanders instituted July 18, 1927, in an Illinois court by Armour Fertilizer Works, a corporation of that State. This proceeding was based

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or has paid the amount of such bond or policy into the registry of the court, there to abide the judgment of the court.

"Sec. 2. In all such cases if the policy or certificate is drawn payable to the estate of the insured and has not been assigned in accordance with the terms of the policy or certificate the district court of the district of the residence of the personal representative of the insured shall have jurisdiction of such suit. In case the policy or certificate has been assigned during the life of the insured in accordance with the terms of the policy or certificate, the district court of the district of the residence of the assignee or of his personal representative shall have jurisdiction. In case the policy or certificato is drawn payable to a beneficiary or beneficiaries and there has been no such assignment as aforesaid the jurisdiction shall be in the district court of the district in which the beneficiary or beneficiaries or their personal representatives reside. In case there are claimants of such money or property, or in case there are beneficiaries under any such bond or policy resident in more districts than one, then jurisdiction shall be in the district court in any district in which a beneficiary or the personal representative of a claimant or a deceased claimant or beneficiary resides. Notwithstanding any provision of Part I of this title to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any other Federal court on account of such money or property or on such bond or on such policy or certificate of membership until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

"Sec. 3. Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be suitable and proper, and issue all such customary writs as may be necessary or convenient to carry out and enforce the same.

"Sec. 4. . . ."

upon his notes which undertook to waive homestead and exemption rights. The garnishees admitted liability to Sanders but gave notice of his claim that the proceeds of the policies were exempt from garnishment under Texas laws. He did not appear. After proper publication, judgment was entered against him September 19, 1927. This sustained the attachment and awarded recovery against him in favor of the Fertilizer Works for the amount due upon the notes—$7,589.81; also directed execution. It is in the margin.[2]

Before final trial in the Illinois court under their answers, as permitted by the Act of May 8, 1926, the Insurance Companies, claiming to be mere stakeholders, filed separate interpleader proceedings in the District Court, Eastern District of Texas—June 12, 1928. Sanders and Armour Fertilizer Works, alleged adverse claimants, were made defendants. The sums admitted to be due under the fire policies were paid into court. An injunction re-

[2] "On motion of the plaintiff herein, the defendant, W. D. Sanders, is ruled to appear herein instanter, and thereupon said defendant being called in open court comes not, nor does anyone for said defendant, but herein said defendant makes default, and it appearing to the court that said defendant was duly notified by publication of notice according to law duly notifying said defendant of the pendency of this suit and of the time required of said defendant to appear herein, all of which was a sufficient number of days prior to the time required of said defendant to appear as aforesaid to now require of said defendant that said defendant either appear in this cause at this time or that said defendant suffer judgment by default for want of such appearance, and it further appearing to the court that said defendant is still in default of an appearance herein, it is, on motion of the plaintiff, ordered by the court that default be entered herein against said defendant for want of an appearance.

"And as to the damages sustained by the plaintiff herein, the court hears the evidence contained in the affidavit of plaintiff's claim filed herein and finds therefrom that there is due to the plaintiff the sum of money shown in said affidavit of claim to be due, and assessed the plaintiff's damages at the sum of seven thousand, five hundred eighty-nine and 81/100 dollars ($7,589.81).

"This cause coming on for further proceedings herein, it is considered by the court that the attachment herein be and it hereby is sustained, that the plaintiff have judgment on the default and assessment of damages herein, and that the plaintiff have and recover of and from the defendant, W. D. Sanders, the damages of the plaintiff amounting to the sum of seven thousand, five hundred eighty-nine and 81/100 ($7,589.81) in form as aforesaid assessed, together with the costs by the plaintiff herein expended and that execution issue therefor."

strained the Armour Fertilizer Works from proceeding further in the Illinois court. Answers by both defendants followed. The causes were consolidated. The District Court awarded the fund to Sanders; the Circuit Court of Appeals held that it should go to Armour Fertilizer Works and reversed the trial court. *National Fire Ins. Co.* v. *Sanders*, 33 F. (2d) 157; *National Fire Ins. Co.* v. *Sanders*, 38 F. (2d) 213. Certiorari, granted upon Sanders' petition, brings the matter here.

The facts are not in dispute. The parties agree that the proceedings in Illinois were according to her statutes; and that under the settled law there Sanders claim of exemption would have been denied and judgment given against the garnishees if the cause had followed the ordinary course.

The Circuit Court of Appeals overruled objections to the jurisdiction of the District Court and affirmed the latter's authority to consider and determine the rights of the claimants.

It concluded that the Texas statutes did not control; that the Act of May 8, 1926, was intended to afford protection to stakeholders, not to alter the rights of adverse claimants; that the rights of each claimant under the law of the State where they arose should be considered; and that equitable principles commonly accepted in federal courts should be applied.

It held that by the Illinois garnishment the money payable by the Companies to Sanders was sequestrated and that this was good against his claim of exemption; that the lien so obtained followed the fund paid into court. And it directed that the Illinois judgment against him should be satisfied.

Upon the first hearing the District Court dismissed the bill for lack of jurisdiction; the Circuit Court of Appeals reversed. Judgment went for Sanders on the second trial; the Circuit Court of Appeals again reversed.

Objection to jurisdiction of the District Court is now made upon the theory that the defendants are not adverse claimants within the intendment of the interpleader Act since one admits the attached debt is payable primarily to the other and seeks to recover because of his indebtedness to it. The court below adequately answered this contention.—

> "We think that the facts in this case show that the District Court is mistaken in concluding that the claims of Armour

and Sanders are not adverse. Each is claiming the proceeds of the policies to the exclusion of the other. Armour claims by virtue of its Illinois judgment against Sanders and the attachment, and Sanders, while not disputing his obligation to Armour, claims the proceeds, notwithstanding, by virtue of the exemption under the laws of Texas. The statute is remedial and to be liberally construed. It is broad enough to cover any adverse claims against the proceeds of the policies, no matter on what grounds urged. Its terms are not to be interpreted as meaning only adverse claims of those pretending to be beneficiaries of the insured."

The general purpose and effect of the Act of March 8, 1926, were also well stated below—

"Suits for interpleader in which actions in other courts are enjoined were familiar to equity when the Constitution was adopted [see *Spring* v. *South Carolina Ins. Co.*, 8 Wheat. 268] and are one of the forms of controversy to which, when arising between citizens of different States, the Federal judicial power was extended. The Act enlarges the processes of the District Court to cover a broad territory, but otherwise authorizes only an ordinary form of equitable relief. . . . The District Court of course is bound on an interpleader to give full faith and credit to the garnishment proceedings in Illinois. *Cooper* v. *Newell*, 173 U. S. 567. . . .

"We do not think the filing of the Federal interpleader and the payment thereunder of the money into the District Court in Texas operated to bring it under the dominion of Texas law. The applicant for interpleader often has a choice of forum, and he cannot at his will subject the rights of the contesting claimants to one set of laws rather than another. The purpose of the interpleader statute was to give the stakeholder protection, but in nowise to change the rights of the claimants by its operation. The interpleader is a suit in equity, and equitable principles and procedure are the same throughout the Federal jurisdiction. The court is to weigh the right or title of each claimant under the law of the State in which it arose, and determine which according to equity is the better. The decision should be the same whether the interpleader is filed in Illinois or in Texas. No one's rights are

intended to be altered by paying the fund into the court, which as an impartial neutral is to determine them."

Assertion by the complainant of entire disinterestedness is essential to a bill of interpleader. *Groves* v. *Santell*, 153 U. S. 465, 485. "In such a bill it is necessary to aver that the complainant has no interest in the subject-matter of the suit; he must admit title in the claimants and aver that he is indifferent between them, and he cannot seek relief in the premises against either of them." *Killian* v. *Ebbinghaus*, 110 U. S. 568, 571.

The situation here is unlike that presented where one voluntarily subjects himself to its jurisdiction and seeks the aid of a court to enforce his claim. See Story on Conflict of Laws (8 ed.) § 598. The Armour Fertilizer Works asks nothing under any Texas law. Brought into the District Court against its will it was held there against its protest and enjoined from proceeding further in Illinois. It now claims priority of right and only asks what it would have secured but for the injunction. Under such circumstances, to hold that the statutes of Texas control would destroy rights duly obtained in Illinois; would permit the Insurance Companies by interpleader proceedings to change the positions of defendants; and, in effect, seriously interfere with the impartial adjustment of existing equities. We think Congress had no intention to permit such destruction of acquired rights, if indeed it had power so to do.

By his answer Sanders thus stated his claim to the fund in court—

> "That by reason of the fact that the property which was the subject of insurance covered by said insurance policy was the homestead of the defendant, W. D. Sanders, the proceeds of the same which have been tendered into court by the plaintiff herein are exempt to the defendant, W. D. Sanders, under the laws and Constitution of the State of Texas, and his rights therein are superior and prior to the rights of the defendant, Armour Fertilizer Works."

Armour Fertilizer Works asserted—

> "On or about the 18th day of July, 1927, it filed a suit in the Municipal Court of Chicago, Cook County, Illinois, styled Armour Fertilizer Works, a corporation, trading as the

Planters Fertilizer and Chemical Company, versus W. D. Sanders, being numbered 1413423. Said suit was based upon eight promissory notes upon which there was due at that time, including principal, interest and attorney's fees, the sum of $7,589.81. That in connection with said proceedings a writ of attachment and garnishment was issued out of said court, and was, on the 19th day of July, 1927, served upon the plaintiff herein. That the defendant W. D. Sanders was duly cited by publication, in accordance with the laws of the State of Illinois, to appear and answer said suit. Judgment was taken against the said W. D. Sanders in said suit on September 19, 1927, for the sum of $7,589.81. That said case has not been dismissed as between this defendant and the plaintiff herein, garnishee in that suit. The judgment rendered in said suit is a valid and binding judgment and was procured in accordance with the laws of the State of Illinois, and is a valid judgment against the defendant W. D. Sanders to the extent of the funds impounded by said garnishment. That under the terms of said judgment the said attachment and garnishment against the plaintiff herein and against the defendant W. D. Sanders was sustained and all matters in dispute and with reference to the funds involved herein, were and have been judicially determined by said judgment."

We are not now primarily concerned with rights of a garnishee. The Insurance Companies have paid their debts and obtained complete discharge. Only Sanders and the Armour Fertilizer Works are interested.

He presented claims against Connecticut corporations arising under insurance contracts which he had not undertaken to enforce. These were free from execution in Texas. He might have sued upon them in Illinois; there they were subject to valid attachment.

The Armour Fertilizer Works, an Illinois corporation, presented the judgment against Sanders duly rendered by a court of that State in a proceeding properly begun and prosecuted. It had secured a lien upon the claims against the Insurance Companies. There is no ground for any claim of fraud. True, no final judgment had gone against the garnishees; but as between Sanders and the Fertilizer Works judgment stood against him; also, sequestration of the debts. The precise effect which would be given this pre-

liminary judgment, as against the garnishees, in proceedings involving their rights may be doubtful, but opinions by the Supreme Court of Illinois clearly indicate that Armour Fertilizer Works secured a lien upon the Sanders claims; and that, but for the injunction, final valid judgment would have gone against the Insurance Companies, accompanied by a lien good against all the world.

The effect of the proceedings in Illinois as against one occupying the position of Sanders is plain enough under her statutes and decisions. The Illinois courts would have rejected his claim of exemption under the laws of Texas. This view is affirmed here by agreement.

The Illinois rule is that garnishment imposes an inchoate lien subject to defeat by certain subsequent events, none of which are present here. Also, that final judgment in Illinois against the garnishee prior to one in another jurisdiction is conclusive of the rights of the parties. *Lancashire Insurance Co.* v. *Corbetts*, 165 Ill. 592; *Becker* v. *Illinois Central Railroad*, 250 Ill. 40. Also, "that property, real and personal, attached, and funds in the hands of the garnishee, are placed on the same footing,—that is, when attached, such property or funds are appropriated from that time to the payment of a certain class of judgment creditors specifically enumerated." Accordingly, the principal debtor may not assign his claim against the garnished one after the writ has been served upon the latter. *National Bank of America* v. *Indiana Banking Co.*, 114 Ill. 483, 489. *Martin* v. *Dryden*, 6 Ill. 187, declares—

> "Without a levy of the attachment, or the service of a garnishee, the court has no jurisdiction to proceed, by publication of notice, to render any judgment. But, by the seizure of an estate or property of a defendant, or the service of garnishment upon any having estate, property, or effects of his in their hands, the law has laid hold of a fund, which it may condemn, and appropriate to the satisfaction of whatever judgment it may render against the defendant, and thereupon the court proceeds to hear as to the indebtedness. . . .
>
> "These remarks and views apply also to the question of lien. This specific appropriation of property must amount to something as to those who may deal in relation to it; else the

defendant could, at any time before judgment, defeat the object of the party by a sale, and possibly, even the jurisdiction of the court. We are of the opinion, that the attachment is a lien from the date of the levy, when followed by a judgment, and which will have relation back to it. This doctrine is sanctioned by numerous authorities, which I will not review."

In the circumstances presented the proceedings in Illinois gave to Armour Fertilizer Works a paramount right or superior equity to the proceeds of the policies. To hold that the District Court in Texas could enjoin the Fertilizer Works from proceeding further and then declare that because the last step in the Illinois suit had not been taken Sanders, in some way, became entitled to priority, plainly would be inequitable. Moreover, it would deny to the garnishment proceedings the credit and effect accorded them in the State where taken.

It is unnecessary to enter upon discussion of vexed questions arising out of garnishment proceedings in different jurisdictions. The different views are well stated in Minor on Conflict of Laws, Sections, 125, 126, 209. This Court has had occasion to consider the general subject in *Cole* v. *Cunningham*, 133 U. S. 107; *Chicago, Rock Island & Pacific Ry.* v. *Sturm*, 174 U. S. 710; *King* v. *Cross*, 176 U. S. 396; *Harris* v. *Balk*, 198 U. S. 215, 223. The latter says—

"Notice to the debtor (garnishee) of the commencement of the suit, and notice not to pay to his creditor, is all that can be given, whether the garnishee be a mere casual and temporary comer, or a resident of the State where the attachment is laid. His obligation to pay to his creditor is thereby arrested and a lien created upon the debt itself. *Cahoon* v. *Morgan*, 38 Vermont, 234 236; *National Fire Ins. Co.* v. *Chambers*, 53 N. J. Eq. 468, 483. We can see no reason why the attachment could not be thus laid, provided the creditor of the garnishee could himself sue in that State and its laws permitted the attachment."

Petitioner's argument proceeds upon the erroneous assumption that the money paid into court came under the dominion of Texas law—especially her exemption statutes. This view is not in harmony with the settled law of Illinois that an attachment when

levied on the debtor fixes a lien upon the claim and prevents subsequent transfer by the creditor; also, with the reasoning and conclusion in *Chicago, Rock Island & Pacific Ry.* v. *Sturm, supra.*

The latter case—approved in *King* v. *Cross, supra,* and *Harris* v. *Balk, supra*—held that garnishment proceedings pending in Iowa against a claim for wages due by the Railway to a resident of Kansas, and there exempt from execution, constituted good defense when the wage-earner subsequently sued the Railway in Kansas. It approved the doctrine that debts accompany the debtor and may be attached wherever he can be sued by his creditor. Among others, it cited with approval, *National Fire Ins. Co.* v. *Chambers,* 53rd N. J. Eq. 468. It declared that the exemption law was no part of the contract of employment and disapproved the notion that when debts are exempt from execution in the State where created this privilege follows as an incident into other jurisdictions.

In *National Fire Ins. Co.* v. *Chambers, supra,* (an interpleader proceeding—1895) Vice Chancellor Pitney elaborately discussed a situation substantially similar to the one before us. After full review of the authorities, he held that a pending garnishment proceeding properly instituted under the laws of Pennsylvania against indebtedness due to a resident of New Jersey created a lien thereon and gave the attaching creditor superior equity to one who claimed by transfer from the New Jersey creditor. He applied the familiar principle that he who is first in time is best in right. See also *American Bank* v. *Rollins,* 99 Mass. 313, and *Garity* v. *Gigie,* 130 Mass. 184.

The record does not indicate that any other creditor was interested in the fund impounded in Illinois. The court below rightly gave precedence to the claim of the Fertilizer Works; also properly ruled that the controversy should be terminated by a decree devoting the fund in court to the Illinois judgment against Sanders.

*Affirmed.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*

# SUPREME COURT OF THE UNITED STATES.

No. 106.—October Term, 1933.

W. D. Sanders, Petitioner,
*vs.*
Armour Fertilizer Works and National Fire Insurance Company, Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[April 30, 1934.]

Mr. Justice Cardozo, dissenting.

The federal court in Texas is under a duty, prescribed by statute (R. S. sec. 905; 28 U. S. C. sec. 687; *American Surety Co.* v. *Baldwin*, 287 U. S. 156, 166), to give full faith and credit to judicial proceedings in Illinois, including proceedings under writs of garnishment or attachment. *Green* v. *Van Buskirk*, 7 Wall. 139. This does not mean that the proceedings are to have any greater effect than they have by law or usage in the courts of Illinois. *Robertson* v. *Pickrell*, 109 U. S. 608, 610, 611; *Ohio* v. *Chattanooga Boiler Co.*, 289 U. S. 439, 443. The duty is fulfilled if the force and efficacy are the same.

Garnishment in Illinois does not create a lien upon the debt or chose in action subjected to the writ. *Bigelow* v. *Andress*, 31 Ill. 322, 330, 332 (distinguishing *Brashear* v. *West*, 7 Pet. 608, which was based upon a different statute); *Gregg* v. *Savage*, 51 Ill. App. 281, 284, aff'd 150 Ill. 161; *McElwee* v. *Wilce*, 80 Ill. App. 338, 342.[1] In substance it is a monition whereby the defendant is apprised that he will be acting at his peril if he makes a *voluntary* payment to the original creditor, the peril consisting in this, that he may have to pay again. *Bigelow* v. *Andress*, *supra*; *Gregg* v. *Savage*, *supra*; *McElwee* v. *Wilce*, *supra*.[1] The writ has no effect upon involuntary payments before the stage of judgment. Some other attaching creditor, suing the same defendant, may garnish

[1] "A garnishment is an attachment of the effects of the debtor in the hands of the garnishee; creating no lien upon anything, but holding the garnishee to a personal liability." Gregg *v.* Savage, *supra*.

the same debt in another jurisdiction. The Illinois plaintiff, though the first to have recourse to garnishment, will be postponed to the other plaintiff who is first with execution. *Lancashire Insurance Co.* v. *Corbetts,* 165 Ill. 592. Indeed, the primary creditor, i. e., the debtor of the attaching plaintiff, may bring suit against the garnishee in another jurisdiction, and collect the indebtedness if he wins the race to judgment. *Becker* v. *Illinois Central R. Co.,* 250 Ill. 40.[2] The garnishment suit is *in personam* against the debtor of a debtor (*Harris* v. *Balk,* 198 U. S. 215), and the *res* is not impounded till the compulsion of judgment and execution has caused it to be paid. Then, but not before, the garnishee will have protection against the hazard of conflicting claims. Cf. *Harris* v. *Balk; supra; Louisville & V. R. Co.* v. *Dyer,* 200 U. S. 176; *B. & O. R. Co.* v. *Hostetter,* 240 U. S. 620.

What has been written does not go beyond the law as declared in Illinois. The fact is not ignored that there are other jurisdictions in which the process of garnishment receives a different meaning. Sometimes the service of the writ is held to impose upon the debt a fixed and present lien which will have recognition and enforcement everywhere. See, e. g., *Embree* v. *Hanna,* 5 Johns. 100; *Wallace* v. *McConnell,* 13 Pet. 136; *In re Ransford,* 194 Fed. 658, 661; *Chicago, R. I. & P. Ry. Co.* v. *Sturm,* 174 U. S. 710. Sometimes the lien is spoken of as a *quasi* lien or an inchoate one. See e. g.; *Focke* v. *Blum,* 82 Tex. 436, 441; *North Star Boot Co.* v. *Ladd,* 32 Minn. 381, 383; *In re Ransford, supra.* Cf. *Becker* v. *Illinois Central R. Co., supra.* In the conflict of laws the difference may be important between realities and metaphors, between the organism and the germ. Sometimes the Illinois rule is accepted, and there is said to be no lien, or one that does no more than restrain the garnishee from making voluntary payments. See e. g., *Com-*

[2]The Illinois Supreme Court in that case did, it is true, refer to a garnishment in Missouri as creating an "inchoate" lien, but coupled the description with a ruling that the inchoate lien was not a charge upon a cause of action elsewhere against the same defendant.

"By the service of the garnishee summons in Missouri Miller [the plaintiff in that action] acquired a contingent or inchoate lien upon the debt, and appellant could not thereafter make a voluntary payment to the appellee; but the right which Miller acquired was dependent upon subsequently acquiring judgment, and that was not accomplished until a judgment had been recovered in this state, where the debt was free from any right or claim that he had." Becker *v.* Illinois Central R. Co., *supra.*

*mercial State Bank* v. *Pierce*,[3] 176 Ia. 722; *McGarry* v. *Lewis Coal Co.*, 93 Mo. 237; *Parker* v. *Farr*, 2 Browne (Pa.) 331. Little is to be gained by dilating upon these and like decisions, for they are rooted in local laws or customs. Garnishment and attachment today are statutory remedies. They are what the state creating them declares that they shall be. It is of no moment that Illinois might have made their efficacy greater as long as her legislature and courts have preferred to make them less.

In that state of the law the garnishee would have been remiss if it had failed to shape its course with prudent recognition of conflicting possibilities. Its indebtedness to Sanders had been subjected to garnishment by the Armour company in Illinois, but Sanders was threatening it with suit in Texas. If Sanders had a judgment there before Armour was in a position to issue execution in Illinois, the garnishment in all likelihood would count for nothing, yet there was a possibility even then of dispute and litigation. Plainly in the race for judgments and its aftermath, there was the risk of expense and embarrassment, if not of double payment.

The garnishee in this dilemma paid the amount of the indebtedness into the registry of the federal court in Texas and had the rival claimants interplead. 28 U. S. C. sec. 41 (26). The claimant Sanders was entitled to the money unless the Armour company had a lien, and the courts of Illinois had held there was no lien. True there had been a judgment against Sanders, though not against his codefendant, the insurer, but this judgment had been obtained by default after service by publication, not followed by an appearance. It was therefore ineffective as a judgment *in personam*, and in the absence of a lien did not operate *in rem*. *Pennoyer* v. *Neff*, 95 U. S. 714; *New York Life Insurance Co.* v. *Dunlevy*, 241 U. S. 518. The joinder of Sanders had no effect except to give him notice of the garnishment and an opportunity to come in, if he was so minded, and contest the plaintiff's claim. *Harris* v. *Balk*, *supra*, p. 227. He declined the invitation and preferred

[3] "The garnishment proceedings created no lien upon any property belonging to the original defendant, if any, in the hands of the garnishee. By the garnishment proceedings a personal claim was acquired against the garnishees to the extent of any money or property that might be in their hands at the time the garnishment was served, belonging to the judgment defendant." Commercial State Bank v. Pierce, *supra*, at 732.

to litigate at home. Whatever lien has been adjudged as the result of his default was contingent upon the consummation of proceedings to charge the garnishee, and ended when they lapsed, just as if the suit were discontinued. It did not rise to the rank of a general interest in property, adhering to the debt everywhere and qualifying the title in another jurisdiction. Probably no one would contend that by force of the judgment against Sanders a suit could have been maintained by Armour as *quasi* owner of the policies outside of Illinois. If that was so before the interpleader, it was even more plainly so thereafter. By the express terms of the decree the stakeholder was discharged when the fund was paid into the registry (38 F. (2d) 212) with the result that there was no longer the possibility of pursuing the garnishee anywhere and thus perfecting the attachment. If some inchoate incumbrance had existed until then, it was then obliterated forever. The fund was free and clear.

The federal court in Texas was thus driven to a choice between a claimant with a foreign attachment which by the law of its creation was of no extraterritorial validity till it had ripened into payment under the compulsion of a judgment, and a claimant whose title to the fund was undisputed unless the lien of the attachment was presently effective. It is not easy to see how there could be any choice but one.

The decree of the Court of Appeals should be reversed and that of the District Court affirmed.

The CHIEF JUSTICE, MR. JUSTICE BRANDEIS and MR. JUSTICE STONE join in this dissent.